

MOTION FOR SUMMARY JUDGMENT
EXHIBIT 1
Plaintiff's Deposition

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<p style="text-align: center;">UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS</p> <p>-----</p> <p>JOSEPH H. KORAN, AND * KIMBERLY KORAN, IND. AND * ON BEHALF OF ANA KORAN, * JOSEPH KORAN, JR., AND * ERIC KORAN, MINORS * Plaintiffs * CA No. 05-11454 RGS vs. * ELIZABETH WEAVER, AND * TOWN OF SHERBORN * Defendants *</p> <p>-----</p> <p style="text-align: center;">DEPOSITION OF: JOSEPH H. KORAN</p> <p style="text-align: center;">BLACK CETKOVIC & WHITESTONE</p> <p style="text-align: center;">200 Berkeley Street</p> <p style="text-align: center;">Boston, MA 02116</p> <p style="text-align: center;">July 21, 2006</p> <p style="text-align: center;">Commenced at 10:49 a.m.</p> <p style="text-align: center;">LESLIE A. D'EMILIA</p>	<p style="text-align: center;">INDEX</p> <p>1 Witness Direct Cross Redirect Recross JOSEPH H. KORAN</p> <p>3 By Mr. Cetkovic 5 4 By Mr. Durso By Mr. Leedberg 36</p> <p>5 EXHIBITS</p> <table border="1"> <thead> <tr> <th>Number</th><th>Page</th></tr> </thead> <tbody> <tr> <td>1</td><td>MetroWest Medical Records 48</td></tr> <tr> <td>2</td><td>Sherborn & Rescue Records 56</td></tr> <tr> <td>3</td><td>Sherborn Fire Dept. Records 57</td></tr> <tr> <td>4</td><td>Answers to Interrogatories 88</td></tr> <tr> <td>5</td><td>Report 2-10-03 95</td></tr> <tr> <td>6</td><td>Medical records 104</td></tr> </tbody> </table> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	Number	Page	1	MetroWest Medical Records 48	2	Sherborn & Rescue Records 56	3	Sherborn Fire Dept. Records 57	4	Answers to Interrogatories 88	5	Report 2-10-03 95	6	Medical records 104
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<p>1 APPEARANCES:</p> <p>2 Representing the Plaintiff, Joseph H. Koran:</p> <p>3 LAW OFFICE OF CARMEN L. DURSO</p> <p>4 Suite 1425</p> <p>5 175 Federal Street</p> <p>6 Boston, MA 02110-2241</p> <p>7 (617) 728-9123</p> <p>8 dursolaw@tiac.net</p> <p>9 Representing the Defendant, Elizabeth Weaver:</p> <p>10 BLACK CETKOVIC & WHITESTONE</p> <p>11 200 Berkeley Street</p> <p>12 Boston, MA 02116</p> <p>13 BY: DRAGAN CETKOVIC, ESQ.</p> <p>14 (617) 236-1900</p> <p>15</p> <p>16 Representing the Defendant, Town of Sherborn:</p> <p>17 PIERCE, DAVIS & PERRITANO, LLP</p> <p>18 Ten Winthrop Square</p> <p>19 Boston, MA 02110-1257</p> <p>20 BY: MICHAEL D. LEEDBERG, ESQ.</p> <p>21 (617) 350-0950 EXT. 105</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 MR. CETKOVIC: Can we agree to the</p> <p>2 stipulations that all objections and motions to</p> <p>3 strike are reserved until the time of trial or</p> <p>4 motion for summary judgment, whichever comes first?</p> <p>5 MR. DURSO: Sure.</p> <p>6 MR. CETKOVIC: And how about signing the</p> <p>7 transcript?</p> <p>8 MR. DURSO: Waive the notary, 30 days.</p> <p>9 MR. CETKOVIC: Any other preliminary</p> <p>10 matters?</p> <p>11 MR. DURSO: No.</p> <p>12 STIPULATION</p> <p>13 It is hereby stipulated and agreed by and</p> <p>14 between counsel for the respective parties that the</p> <p>15 sealing and filing of the deposition in court are</p> <p>16 waived; that the witness shall read and sign the</p> <p>17 deposition transcript under the pains and penalties</p> <p>18 of perjury, within thirty days of receipt thereof.</p> <p>19 It is further stipulated that all objections,</p> <p>20 except as to the form of the question, and all</p> <p>21 motions to strike are reserved until the time of</p> <p>22 trial.</p> <p>23 JOSEPH H. KORAN,</p> <p>24 having been satisfactorily identified by the</p>														

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<p style="text-align: right;">Page 5</p> <p>1 production of his driver's license and duly sworn by</p> <p>2 the Notary Public, testified under oath as follows:</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. CETKOVIC:</p> <p>5 Q. Sir, could you state your full name, please?</p> <p>6 A. Joseph Henry Koran.</p> <p>7 Q. Mr. Koran, my name is Dragan Cetkovic, and I</p> <p>8 represent Elizabeth Weaver in this personal injury</p> <p>9 lawsuit that you brought. I'm going to ask you a</p> <p>10 series of questions today. This is a deposition</p> <p>11 proceeding. Let me ask you first, have you ever</p> <p>12 been through a deposition before this one?</p> <p>13 A. No.</p> <p>14 Q. Just a couple of ground rules. Let me finish my</p> <p>15 question before you start answering. Okay?</p> <p>16 A. Okay.</p> <p>17 Q. You have to give verbal answers so the stenographer</p> <p>18 can take it down. In other words, "uh-uh" or</p> <p>19 "uh-huh," you never know how that's going to come</p> <p>20 out in the transcript. Do you understand that?</p> <p>21 A. I do.</p> <p>22 Q. If you at any time need a break or want to talk to</p> <p>23 your attorney, just let us know. All right?</p> <p>24 A. Okay.</p>	<p style="text-align: right;">Page 7</p> <p>1 A. Sodexho.</p> <p>2 Q. How's that spelled?</p> <p>3 A. S-o-d-e-x-h-o.</p> <p>4 Q. And how long have you been with Sodexho?</p> <p>5 A. Three weeks.</p> <p>6 Q. What is your salary?</p> <p>7 A. Current salary is \$85,000 a year.</p> <p>8 Q. Do you have a bonus or profit sharing?</p> <p>9 A. Yes.</p> <p>10 Q. What is that?</p> <p>11 A. Bonus is up to 20 percent of my salary.</p> <p>12 Q. So you've been in this job just for three weeks;</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. What did you do before?</p> <p>16 A. Worked for US Foodservice as a category manager of</p> <p>17 seafood.</p> <p>18 Q. And they're similar duties?</p> <p>19 A. Yes.</p> <p>20 Q. Currently where's your office located physically?</p> <p>21 A. Gaithersburg, Maryland.</p> <p>22 Q. Gay?</p> <p>23 A. G-a-i-t-h-e-r-s-b-u-r-g.</p> <p>24 Q. And as a manager what are your duties?</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. What is your current residential address?</p> <p>2 A. 6101 Twain Drive, Newmarket, Maryland 21774.</p> <p>3 Q. And how long have you been living at this address?</p> <p>4 A. October 31, 2005 I moved in.</p> <p>5 Q. Is it a house?</p> <p>6 A. Yes.</p> <p>7 Q. Do you own it?</p> <p>8 A. Yes.</p> <p>9 Q. What is your Social Security number?</p> <p>10 A. 275-44-9317.</p> <p>11 Q. Are you married?</p> <p>12 A. Yes.</p> <p>13 Q. Your spouse's name?</p> <p>14 A. Kimberly Ann Koran.</p> <p>15 Q. Do you have kids?</p> <p>16 A. Yes.</p> <p>17 Q. How many?</p> <p>18 A. Three.</p> <p>19 Q. Do you currently work?</p> <p>20 A. Yes.</p> <p>21 Q. What do you do?</p> <p>22 A. I'm a senior manager of supplies, seafood and</p> <p>23 poultry, for a management company.</p> <p>24 Q. What's the name of the management company?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. Negotiate purchasing contracts.</p> <p>2 Q. Does that involve lots of travelling?</p> <p>3 A. Can you define lots?</p> <p>4 Q. What is currently the percentage of your time spent</p> <p>5 in travel?</p> <p>6 A. 20 percent.</p> <p>7 Q. Tell me a little bit about your educational</p> <p>8 background?</p> <p>9 A. I graduated from high school in 1980. Attended--</p> <p>10 Q. Which one?</p> <p>11 A. --North High in East Lake, Ohio. I went to</p> <p>12 Defiance College for two years in Defiance, Ohio.</p> <p>13 Q. Did you get a degree?</p> <p>14 A. No. Went to University of Akron for two years in</p> <p>15 Akron, Ohio. Did not complete my degree.</p> <p>16 Q. Did not?</p> <p>17 A. No. I'm currently enrolled at the</p> <p>18 University of Phoenix on-line.</p> <p>19 Q. For what degree?</p> <p>20 A. Business management.</p> <p>21 Q. For bachelor's degree?</p> <p>22 A. Yes.</p> <p>23 Q. When do you expect to complete that?</p> <p>24 A. 2007.</p>

<p style="text-align: right;">Page 9</p> <p>1 Q. Your date of birth and place?</p> <p>2 A. November 25, 1961, Painesville, Ohio.</p> <p>3 Q. In 2003 were you employed?</p> <p>4 A. Yes.</p> <p>5 Q. Who did you work for?</p> <p>6 A. Schwan's Food Service.</p> <p>7 Q. And where are they out of?</p> <p>8 A. Marshall, Minnesota.</p> <p>9 Q. Where was your office?</p> <p>10 A. Cicero, New York.</p> <p>11 Q. What's there? Is it an office building, or do you</p> <p>12 work out of your house?</p> <p>13 A. In New York?</p> <p>14 Q. Yes.</p> <p>15 A. I worked out of my house.</p> <p>16 Q. What was your position?</p> <p>17 A. Zone manager.</p> <p>18 Q. And what was your zone?</p> <p>19 A. The northeast United States.</p> <p>20 Q. And what were your duties?</p> <p>21 A. Managed a team of regional managers. I had five</p> <p>22 regional managers and managed the P & L for the</p> <p>23 entire zone for foodservice sales.</p> <p>24 Q. What's P & L?</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Salary was the same?</p> <p>2 A. Salary was at 92,000 in 2002. I received an</p> <p>3 increase in 2003.</p> <p>4 Q. Did you have any other compensation from your</p> <p>5 company other than salary and bonus?</p> <p>6 A. I had a company vehicle. I don't know if that was</p> <p>7 considered compensation.</p> <p>8 Q. Anything else? Any other perks?</p> <p>9 A. I guess I would ask to define what perks are.</p> <p>10 Q. Benefits?</p> <p>11 A. Well, there was a percentage of health benefits that</p> <p>12 were paid if that's what you're asking.</p> <p>13 Q. Health. Did you at that time in 2003 have any other</p> <p>14 source of income?</p> <p>15 A. No.</p> <p>16 Q. On February 6, 2003 you were on business in</p> <p>17 Massachusetts; am I correct?</p> <p>18 A. Correct.</p> <p>19 Q. What was your mission? What was your business</p> <p>20 purpose?</p> <p>21 A. I had a meeting with a broker and my regional</p> <p>22 managers.</p> <p>23 Q. Where was the meeting scheduled?</p> <p>24 A. At the Sherborn Inn.</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Profit and loss statement.</p> <p>2 Q. So you were more in the managerial position rather</p> <p>3 than, you know, actually selling or purchasing or</p> <p>4 whatever? Am I correct?</p> <p>5 A. I was in a management position, yes.</p> <p>6 Q. And what was the percentage of your travel outside</p> <p>7 of your office at that time?</p> <p>8 A. 80 percent.</p> <p>9 Q. And what would you do on these business trips?</p> <p>10 A. Met with--worked with my regional managers. Met</p> <p>11 with clients, brokers.</p> <p>12 Q. Were you purchasing food for Schwan's, or you were</p> <p>13 selling their food?</p> <p>14 A. Selling products we manufactured.</p> <p>15 Q. And what were the products?</p> <p>16 A. Three categories, pizza, Asian, southwestern.</p> <p>17 Q. Frozen food?</p> <p>18 A. Yes.</p> <p>19 Q. How much were you making at that time in 2003?</p> <p>20 A. 95,000.</p> <p>21 Q. Any bonuses?</p> <p>22 A. Yes, up to 25 percent of my salary.</p> <p>23 Q. Do you recall what was your bonus in 2002?</p> <p>24 A. I do not recall what my bonus was.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Where?</p> <p>2 A. In Sherborn, Massachusetts.</p> <p>3 Q. Had you been there before, before this trip?</p> <p>4 A. No.</p> <p>5 Q. You lived at that time in Cicero, New York?</p> <p>6 A. Correct.</p> <p>7 Q. Did you travel that day, February 6th?</p> <p>8 A. Yes.</p> <p>9 Q. How did you travel from New York to Massachusetts?</p> <p>10 A. I drove a rented vehicle.</p> <p>11 Q. What was the vehicle?</p> <p>12 A. A Ford Expedition.</p> <p>13 Q. Is that the biggest SUV in the Ford's line-up?</p> <p>14 A. I'm not familiar with their specifications, so I</p> <p>15 can't answer that.</p> <p>16 Q. Have you driven an Expedition before this day?</p> <p>17 A. Yes.</p> <p>18 Q. You said you had an employee's vehicle also?</p> <p>19 A. Yes.</p> <p>20 Q. Was there any reason why you didn't take the</p> <p>21 employee's vehicle?</p> <p>22 A. Yes, there is. I had a number of things that were</p> <p>23 shipped to me from our corporate office that I</p> <p>24 needed to take to the regional managers that I had</p>

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<p>1 there, that I could not carry in that vehicle.</p> <p>2 Q. Did you have a valid driver's license at that time?</p> <p>3 A. Yes.</p> <p>4 Q. Issued by which state?</p> <p>5 A. New York.</p> <p>6 Q. Has your driver's license ever been revoked or</p> <p>7 suspended?</p> <p>8 A. No.</p> <p>9 Q. Never in your life?</p> <p>10 A. I don't recall. I may--not that I remember, not</p> <p>11 that I remember.</p> <p>12 Q. Have you at any time in your life maintained a</p> <p>13 residence in Massachusetts?</p> <p>14 A. No.</p> <p>15 Q. What time did you start your trip on</p> <p>16 February 6, 2003?</p> <p>17 A. Probably about 10:00 in the morning.</p> <p>18 Q. And what's the approximate time you arrived in</p> <p>19 Sherborn?</p> <p>20 A. I was arriving in Sherborn at the time of the</p> <p>21 incident. Around 6:00, 6:30, in that range.</p> <p>22 Q. When was your meeting?</p> <p>23 A. Where was my meeting?</p> <p>24 Q. I'm sorry, when? When was your meeting scheduled</p>	<p>1 Q. Were you talking on the cell phone at that time as</p> <p>2 you were backing up?</p> <p>3 A. No.</p> <p>4 Q. So correct me if I'm wrong, you looked, but you</p> <p>5 didn't see anyone behind you; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. You bumped into something; correct?</p> <p>8 A. Correct.</p> <p>9 Q. How did you learn that the other--that object in</p> <p>10 which you bumped was the motor vehicle?</p> <p>11 A. I got out of my vehicle to look behind me.</p> <p>12 Q. Okay. And what did you see?</p> <p>13 A. I saw that there was a car there.</p> <p>14 Q. Can you describe that car?</p> <p>15 A. It was a small vehicle. It was a Honda Civic.</p> <p>16 Q. What did you do next?</p> <p>17 A. I approached the door to see if the person behind me</p> <p>18 was all right.</p> <p>19 Q. And why did you do that?</p> <p>20 A. Because I bumped the vehicle. I just wanted to be</p> <p>21 sure that I didn't, you know, bump into it too hard</p> <p>22 or anything. It didn't seem like it, but you never</p> <p>23 know.</p> <p>24 Q. So what was the first thing you did as you were</p>
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<p>1 for?</p> <p>2 A. The meeting was scheduled for 6:30.</p> <p>3 Q. Were you late for your meeting?</p> <p>4 A. I was running behind.</p> <p>5 Q. You had an incident that day when your vehicle hit</p> <p>6 another vehicle; is that correct?</p> <p>7 A. Yes.</p> <p>8 Q. Could you describe how that happened?</p> <p>9 A. I pulled into the Sherborn Inn, into the area, and</p> <p>10 as I pulled up I noticed a sign that stated one-way,</p> <p>11 and I was going the wrong way in the one-way. So I</p> <p>12 had come to a stop. I looked in both side mirrors,</p> <p>13 in which one side I could see a snow bank. The</p> <p>14 other side I could see a clear parking lot. I</p> <p>15 looked in the mirror out to look behind me. I saw</p> <p>16 nothing behind me. I turned around and looked and</p> <p>17 began to back up and bumped into a vehicle behind</p> <p>18 me.</p> <p>19 Q. What distance did you back up before you hit the</p> <p>20 other vehicle?</p> <p>21 A. Between three and five feet maximum.</p> <p>22 Q. Have you heard beeping of the horn as you were</p> <p>23 backing up?</p> <p>24 A. No.</p>	<p>1 approaching the other vehicle?</p> <p>2 A. Well, I started walking towards the vehicle, and the</p> <p>3 person in the other vehicle got out of their</p> <p>4 vehicle.</p> <p>5 Q. Can you describe that person?</p> <p>6 A. It was an older woman, and you know, dressed--I</p> <p>7 don't know. Her attire was very LL Bean like I</p> <p>8 guess you would say.</p> <p>9 Q. How tall was she?</p> <p>10 A. I would say approximately five, two, five, three.</p> <p>11 Q. And you said elderly lady; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. Were you able to estimate her age at that time?</p> <p>14 A. My guess was probably late 60s, early 70s.</p> <p>15 Q. Did you say anything to her?</p> <p>16 A. The first thing I said was, "Geez, I'm sorry, I</p> <p>17 didn't even know you were there."</p> <p>18 Q. Did she respond to that?</p> <p>19 A. She did.</p> <p>20 Q. What did she say?</p> <p>21 A. She was--she started to yell at me in a very</p> <p>22 aggressive manner, which took me by surprise.</p> <p>23 Q. Do you remember any specific words that she said to</p> <p>24 you?</p>

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<p>1 A. All I remember is she was very angry and was 2 yelling, and I was just shocked because she was 3 using some expletives that were--I would not find 4 characteristic of a 70-something year old or an 5 elderly woman to use. 6 Q. Could you tell us what words that she used? 7 A. She called me an asshole. She said, "Are you 8 stupid?" And she was went on--it was just the 9 aggressive nature of her yelling. It just did not 10 seem characteristic of a woman. My mother is close 11 to the same age. 12 Q. How tall you are? 13 A. Six foot. 14 Q. And were you afraid for your safety at that time? 15 A. No. 16 Q. You were not scared of this older lady; correct? 17 A. I was shocked. I was not scared. 18 Q. Shocked meaning in a sense of surprise? 19 A. Yes. 20 Q. So what happened next? Did you--what did you do 21 next? 22 A. I said--you know, I apologized again. I said, 23 "Thank goodness nobody got hurt. Let's exchange 24 information." To which I went and got the</p>	<p>1 started to step away because the two cars were close 2 together to give her clearance, and as I was backing 3 away, she took off and drove over my foot. 4 Q. Which one? 5 A. My left foot. 6 Q. What would you estimate this exchange, this--what 7 was the time frame from the moment you got out of 8 your car until she drove off? 9 A. Probably less than two minutes. 10 Q. Have you used any profane language towards her? 11 A. I was sarcastic, but I would say profane language 12 was probably after she ran over my foot I did swear. 13 Q. How were you sarcastic? Can you be a little more 14 specific, what exactly you said that was sarcastic? 15 A. I said, "Do you think that I drove here from 16 New York just to back into your vehicle," and she 17 said, "Yes," and I said, "You've got to be kidding 18 me." It was as if--I was just shocked at the fact 19 that she just was very aggressive in thinking that 20 this was intentional in some way when it was clearly 21 just an accident, a simple mistake that was easily 22 corrected. 23 Q. The accident then was your fault; is that correct? 24 A. Yes.</p>
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<p>1 appropriate insurance information out of my daytimer 2 in the car. She was gathering her information. We 3 exchanged information. Went back to our cars to 4 write down each other's information. 5 Q. Did she get out of the car? I think you testified 6 that she got out of the car and starting yelling at 7 you; is that correct? 8 A. Yes. 9 Q. So she gave you her paperwork. You gave her your 10 paperwork. What happened after that? 11 A. I recorded all the information about her. I don't 12 know what she did with my information, but I 13 recorded the information about her, and then I went 14 to return it to her vehicle while she was sitting in 15 her vehicle. 16 Q. Did you say anything to her at that time? 17 A. Yes, I said, "I'm sorry, I made a mistake." 18 Q. And what did she say, if anything? 19 A. She said, you know--I said, "I'm sorry, I made a 20 mistake. Haven't you ever made a mistake?" And she 21 said no. And I said, "You're telling me you never 22 made a mistake in your life," and she said, "No," 23 and I just said, "Wow, that's amazing," and at that 24 point she threw her car in reverse, backed up. I</p>	<p>1 Q. Did you at any time during this exchange of words 2 make any aggressive movements towards this lady? 3 A. No. 4 Q. And the exact location of this incident was in the 5 parking lot of the Sherborn Inn? 6 A. It was not in the parking lot. It was in the 7 driveway area that was leading to the parking lot 8 and near where the entrance circle was, the drop off 9 area was near that. 10 Q. So off the main street, but not in a parking lot? 11 A. Correct. 12 Q. And do you know what the street name is, the main 13 street there? 14 A. It's almost like an alley. It's Powder House or 15 Powder Home or something like that. I don't 16 remember the name of it. Something along that line. 17 Q. What happened to you when she ran over your left 18 foot? 19 A. Well, it knocked me to the ground. 20 Q. How did you fall to the ground? 21 A. I tried to--I was trying to back away, and it ran 22 over my foot, and I fell trying to move with--you 23 know, as the vehicle was rolling, I just rolled to 24 my left side and fell. It wasn't a fast fall</p>

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<p>1 because I was trying to brace myself from pulling my</p> <p>2 leg out from underneath the vehicle, and you know,</p> <p>3 as she was driving off.</p> <p>4 Q. You said you braced yourself. So you landed on your</p> <p>5 hands?</p> <p>6 A. I landed on one hand and to the side.</p> <p>7 Q. Did any part of your back or your shoulders come in</p> <p>8 contact with the surface?</p> <p>9 A. I believe my--I sat down on my left side on the</p> <p>10 ground, but I caught myself with my left hand.</p> <p>11 Q. What did you do next?</p> <p>12 A. I had yelled, "Hey." I said, "What the hell are you</p> <p>13 doing," and then she just kept driving.</p> <p>14 Q. What did you do next?</p> <p>15 A. I called 911.</p> <p>16 Q. And who arrived?</p> <p>17 A. Two police officers and an ambulance.</p> <p>18 Q. What did you tell police officers?</p> <p>19 A. I told the police officers that I had had a minor</p> <p>20 traffic incident with a woman, and after exchanging</p> <p>21 information she drove off aggressively and drove</p> <p>22 over my foot. They asked if I could describe her,</p> <p>23 and I gave them the information about her.</p> <p>24 Q. What kind of footwear did you have on that day?</p>	<p>1 Q. Let's first focus on the foot. Have you received</p> <p>2 any treatment to your foot, specifically for your</p> <p>3 foot, medical treatment?</p> <p>4 A. Other than diagnosis?</p> <p>5 Q. Tell me everything.</p> <p>6 A. Yes, medical treatment. Yes, I have.</p> <p>7 Q. Where was it?</p> <p>8 A. I had x-rays--</p> <p>9 Q. Okay. What--</p> <p>10 A. --at the Natick Hospital. Physical exam at the</p> <p>11 Natick Hospital. Physical exam by my primary care</p> <p>12 physician when I got back to New York, and physical</p> <p>13 exam by an orthopedic specialist that I was referred</p> <p>14 to by my primary care.</p> <p>15 Q. Okay. Let's start first with the x-rays. Did</p> <p>16 anyone tell you what the x-rays have shown?</p> <p>17 A. The attending physician at the ER said--yes, they</p> <p>18 did give me the results of the x-rays.</p> <p>19 Q. What did they tell you?</p> <p>20 A. That it was not broken, no fractures.</p> <p>21 Q. No fractures. Any injuries that they could see</p> <p>22 there?</p> <p>23 A. They said it was soft tissue damage.</p> <p>24 Q. And the same doctor who read the x-rays looked also</p>
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<p>1 A. I had a pair of loafers, tassel loafers.</p> <p>2 Q. Did you look at your foot right after the accident?</p> <p>3 A. Did I look--</p> <p>4 Q. Yes.</p> <p>5 A. I looked down at my foot, yes.</p> <p>6 Q. Did you take off your shoe and stop to see--</p> <p>7 A. No, no.</p> <p>8 Q. Did you feel anything?</p> <p>9 A. I felt pain, and I felt a shooting pain through my</p> <p>10 foot.</p> <p>11 Q. And did you tell police officers about pain in your</p> <p>12 foot?</p> <p>13 A. Yes.</p> <p>14 Q. What treatment, medical treatment, did you receive</p> <p>15 for your foot?</p> <p>16 A. Physical therapy.</p> <p>17 Q. For your foot?</p> <p>18 A. Uh-huh.</p> <p>19 Q. How long was the physical therapy?</p> <p>20 A. It was in conjunction with physical therapy for</p> <p>21 another injury related to the accident. So it was</p> <p>22 about three months.</p> <p>23 Q. Is this--this PT was for your back and foot?</p> <p>24 A. Yes.</p>	<p>1 into your foot; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Examined? Do you remember the name of the doctor?</p> <p>4 A. No.</p> <p>5 Q. Did they prescribe any treatment for your foot at</p> <p>6 that time?</p> <p>7 A. They told me to follow-up with my physician at home.</p> <p>8 Q. Was your leg swollen, foot swollen?</p> <p>9 A. Yes.</p> <p>10 Q. Did they put ice or anything on it?</p> <p>11 A. There was ice in the ambulance, and then they put it</p> <p>12 into a boot.</p> <p>13 Q. What kind of boot?</p> <p>14 A. One of the hard sole, and then it wraps around, and</p> <p>15 you lace it up style orthopedic boot.</p> <p>16 Q. And were you able to drive from Massachusetts to</p> <p>17 New York? Were you able to drive back?</p> <p>18 A. Yes.</p> <p>19 Q. After the conclusion of your business trip?</p> <p>20 A. Yes.</p> <p>21 Q. Were you wearing the boot as you were driving?</p> <p>22 A. Yes.</p> <p>23 Q. How long you wore the boot?</p> <p>24 A. I wore the boot for about four or five days.</p>

<p style="text-align: right;">Page 25</p> <p>1 Q. Do you currently have any special orthopedic shoe 2 for your left foot or anything like that? 3 A. No. 4 Q. Let's go back. You went back then to your primary 5 doctor in New York? 6 A. Yes. 7 Q. When did you see him or her? 8 A. The Monday that I returned. I returned on Sunday 9 afternoon. I saw the doctor on Monday morning. 10 Q. What was the reason you went to your primary doctor? 11 A. My foot and my back were both injured. 12 Q. Who was your primary doctor at that time? 13 A. Dr. Diaz, D-i-a-z. 14 Q. Is this the doctor that nobody can find his records? 15 A. His practice was dissolved. So I believe his 16 records were--are--they're having difficulty 17 locating them. 18 Q. Why was his practice dissolved? 19 A. He and his partner, from what I understand, did not 20 get along. 21 Q. Is he still a practicing physician in the 22 State of New York? 23 A. He is an attending physician at hospitals. 24 Q. Do you know where is he now?</p>	<p style="text-align: right;">Page 27</p> <p>1 is that right? 2 A. Yes. 3 Q. And foot? 4 A. Yes. 5 Q. In every session both back and foot? 6 A. Yes. 7 Q. Was your foot still swollen at that time? 8 A. Not as swollen, no. 9 Q. Why is it you needed physical therapy on your foot? 10 A. I was having pain in the foot and having cramping 11 spasms in the foot. 12 Q. So after this physical therapy, that lasted, you 13 said, three months? 14 A. Yes. 15 Q. You saw Dr. Wulff? 16 A. While I was attending physical therapy I saw 17 Dr. Wulff. 18 Q. Did he examine your foot? 19 A. Yes. 20 Q. What did he say? 21 A. He said that his opinion was that it was soft tissue 22 damage or nerve damage, and there's really nothing 23 that can be done. I should just live with it. 24 Q. After you heard that, did you seek any other</p>
<p style="text-align: right;">Page 26</p> <p>1 A. I know he's in the hospital system in New York, the 2 University's Hospital, I believe, in Syracuse, I 3 believe. 4 Q. Did you he examine your foot? 5 A. Yes. 6 Q. And what did he tell you? 7 A. He said that if the x-rays did not show any 8 fractures, then it was soft tissue, and I should 9 just keep it elevated when I can and let it run its 10 course and see how it works, and if it continues to 11 bother, you know, go to physical therapy. 12 Q. What was the next medical provider that you saw for 13 your foot? 14 A. The orthopedic doctor, Dr. Warren Wulff. 15 Q. And when was that? 16 A. That was about--I believe it was a couple months 17 later after going to physical therapy. 18 Q. So you went to physical therapy before you saw 19 Dr. Wulff? 20 A. Yes. 21 Q. And this physical therapy, who prescribed the 22 physical therapy? 23 A. Dr. Diaz. 24 Q. And this physical therapy, they treated your back;</p>	<p style="text-align: right;">Page 28</p> <p>1 treatment for your foot? 2 A. At that point there was nothing else. You know, 3 from two different--a physical therapist and a 4 doctor, no, I didn't seek anything further. 5 Q. Does your foot bother you? 6 A. Yes. 7 Q. Do you walk with a limp? 8 A. At times. 9 Q. Do you use a cane? 10 A. No. 11 Q. And you don't use any orthopedic devices; correct? 12 A. No. 13 Q. Where in your foot is the pain? 14 A. The ball of my foot. 15 Q. How active were you before this accident in terms of 16 sports or any type of physical activities? 17 A. I had--I was a member at a gym, which I had gym 18 memberships prior to, and I had just joined a new 19 gym a month prior to the accident. I had a 20 little--I had two children at the time and was 21 extremely busy with them. They were both very 22 young. My daughter was only two. My son was less 23 than a year. So I was very busy and very physically 24 active with them.</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 29</p> <p>1 Q. Did the foot injury prevent you from doing anything</p> <p>2 you did before the incident?</p> <p>3 A. Going on walks and such, yes.</p> <p>4 Q. Going on walks. Anything else?</p> <p>5 A. I don't recall at this point, but I'm sure there</p> <p>6 were other things.</p> <p>7 Q. When you returned to New York on Sunday, and you</p> <p>8 went to see the doctor on Monday, when did you go</p> <p>9 back to work?</p> <p>10 A. I did not go back to work until--well, I was on a</p> <p>11 conference call Monday, but I was doing that from my</p> <p>12 house and went physically back to work to meetings</p> <p>13 the following week.</p> <p>14 Q. And then that's in February of 2003. You lost your</p> <p>15 job sometime in April of that year?</p> <p>16 A. Yes.</p> <p>17 Q. Why did you lose your job?</p> <p>18 A. I don't know.</p> <p>19 Q. Were you given a reason?</p> <p>20 A. Yes.</p> <p>21 Q. What was that?</p> <p>22 A. The reason I was given was a misuse of a company</p> <p>23 credit card.</p> <p>24 Q. And at that time how long you been with this</p>	<p style="text-align: right;">Page 31</p> <p>1 thereafter?</p> <p>2 A. Shortly thereafter what?</p> <p>3 Q. Shortly after you reported your injury?</p> <p>4 A. My--I worked the day after my injury because I had a</p> <p>5 meeting to attend.</p> <p>6 Q. Okay.</p> <p>7 A. And I--so yes, I did.</p> <p>8 Q. How long were you--how long where you stayed away</p> <p>9 from work because of your foot injury?</p> <p>10 A. I was physically unable--I don't know the exact</p> <p>11 number of days. It's hard to give the exact number</p> <p>12 of days. I don't know.</p> <p>13 Q. Have you had a foot injury before this one?</p> <p>14 A. No.</p> <p>15 Q. How long were you on worker's comp.?</p> <p>16 A. Still involved with workmen's comp. for medical</p> <p>17 treatment.</p> <p>18 Q. How long were you out of work on worker's comp.?</p> <p>19 A. I was never paid compensation if that's what you're</p> <p>20 asking.</p> <p>21 Q. No, no, no. I'm asking--you weren't working for the</p> <p>22 company after your termination; is that right?</p> <p>23 A. Correct.</p> <p>24 Q. Sometime in April of 2003?</p>
<p style="text-align: right;">Page 30</p> <p>1 company?</p> <p>2 A. 19 months.</p> <p>3 Q. Do you claim in this case that you lost your job</p> <p>4 because of your foot injury?</p> <p>5 A. I lost my job--I guess I'm--can you rephrase the</p> <p>6 question, or can you--</p> <p>7 Q. Yes, I can try. Is it your claim in this case that</p> <p>8 somehow your foot injury made you lose your job?</p> <p>9 A. The result of my foot injury, yes, did cause me to</p> <p>10 lose my job, yes.</p> <p>11 Q. How's that? Can you explain that to me?</p> <p>12 A. Because my company did not want me to have a</p> <p>13 workmen's compensation case.</p> <p>14 Q. And when did you make your worker's compensation</p> <p>15 case?</p> <p>16 A. I was--the day after the accident I contacted our</p> <p>17 company office where they filed the claim for me.</p> <p>18 Q. Are you sure about that?</p> <p>19 A. I made the call the day after, yes.</p> <p>20 Q. To report your injury?</p> <p>21 A. Yes, to the department in our company that handled</p> <p>22 that.</p> <p>23 Q. But you returned to work shortly thereafter; is that</p> <p>24 right? You returned to your work shortly</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Correct.</p> <p>2 Q. Then you were out of a job?</p> <p>3 A. Correct.</p> <p>4 Q. Didn't have a job to do; is that right?</p> <p>5 A. Correct.</p> <p>6 Q. You were receiving at that time worker's comp.; is</p> <p>7 that right?</p> <p>8 A. I was--I guess I don't--I need further definition of</p> <p>9 that. If I was receiving workmen's compensation as</p> <p>10 in the form of a compensation check during that time</p> <p>11 period?</p> <p>12 Q. Yes.</p> <p>13 A. No.</p> <p>14 Q. Have you ever received a worker's compensation check</p> <p>15 as a result of this incident?</p> <p>16 A. No. My medical expenses have been covered.</p> <p>17 Q. But not wage? Wages were not covered?</p> <p>18 A. No.</p> <p>19 Q. Between 2000 and 2003 you were treated for gout?</p> <p>20 A. Yes.</p> <p>21 Q. What is that?</p> <p>22 A. Apparently gout is--and I'm not a medical expert,</p> <p>23 but apparently it is an increased uric acid level in</p> <p>24 your blood system.</p>

<p style="text-align: right;">Page 33</p> <p>1 Q. And where is the pain? Where does the pain manifest 2 itself?</p> <p>3 A. In joints in your body.</p> <p>4 Q. And what joints manifested in your body?</p> <p>5 A. Big toe, ankle, knee, elbow, shoulder.</p> <p>6 Q. Big toe on both feet?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Yes?</p> <p>9 A. Yes.</p> <p>10 Q. And where did you treat for that?</p> <p>11 A. That was my doctor in Cincinnati, and my doctor in 12 Syracuse.</p> <p>13 Q. So is it fair to characterize that gout manifests 14 itself as a pain in the foot?</p> <p>15 A. It can.</p> <p>16 Q. And it did in your case?</p> <p>17 A. Yes.</p> <p>18 Q. Did you take any medications between 2000-2003 for 19 gout?</p> <p>20 A. Yes.</p> <p>21 Q. Does it continue to bother you?</p> <p>22 A. No.</p> <p>23 Q. Since 2003 you had no episodes?</p> <p>24 A. No. Nor do I take medication for it either.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. Okay.</p> <p>2 A. I take Tricor for triglycerides. I take Effexor, 3 which is an anti-anxiety, which was prescribed by 4 Dr. Diaz as a result of the accident. I take 5 Kadian, which is a morphine for pain management.</p> <p>6 Q. For what pain?</p> <p>7 A. For my back and my foot. I take an MSIR, which is a 8 morphine sulfate instant release for breakthrough 9 pain. I take Atacand for blood pressure. I take 10 Verapamil also for blood pressure. Two different 11 approaches. I take an 81 milligram of aspirin, and 12 as needed I take Cialis for erectile dysfunction as 13 a result of the injuries and medication.</p> <p>14 Q. Did you take all these medications today that you 15 listed?</p> <p>16 A. I took the Atacand. Oh, I'm sorry, I also take 17 Xanax as well in conjunction. I took the Atacand, 18 the Tricor, and the 81 milligram this morning. The 19 Kadian I take at night, and the morphine sulfate as 20 needed. So I did not take any of those this 21 morning.</p> <p>22 Q. And did you take any anti-anxiety medications this 23 morning?</p> <p>24 A. The Effexor? No, I took it last night, midnight.</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. And I'm sorry, who was the doctor that treated you 2 for that? Do you remember the name?</p> <p>3 A. That was Dr. Samaan.</p> <p>4 Q. Can you spell that?</p> <p>5 A. S-a-m-a-a-n. That was in Cincinnati and Dr. Diaz.</p> <p>6 Q. Cincinnati?</p> <p>7 A. Yes. Would you mind if I got up and walked around a 8 little bit?</p> <p>9 Q. No, not at all, not at all.</p> <p>10 A. I'm a little stiff sitting.</p> <p>11 MR. DURSO: For the record, the witness 12 has some medication that he takes, and he needs to 13 move around occasionally because of that.</p> <p>14 MR. CETKOVIC: That's fine.</p> <p>15 MR. DURSO: Do you want to take a break?</p> <p>16 A. Yeah, if we could just take a couple minutes, that 17 would be great.</p> <p>18 (Brief break.)</p> <p>19 Q. (Mr. Cetkovic) Are you currently on any medications?</p> <p>20 A. Yes.</p> <p>21 Q. What are you taking?</p> <p>22 A. I take--for--I take Zocor, Tricor.</p> <p>23 Q. What's Zocor for?</p> <p>24 A. Zocor is for cholesterol.</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. And you said you take two Xanax and another one?</p> <p>2 A. I take a Xanax, and I take the Effexor, which are 3 both for anti-anxiety prescribed since the accident.</p> <p>4 Q. You did not have anti-anxiety medications before the 5 accident at any time, did you?</p> <p>6 A. I had them once, yes, for reflux.</p> <p>7 Q. What reflux?</p> <p>8 A. I had acid reflux. So they tried that as a method 9 to treat it, but that was back in '99, I believe, 10 '98, '99.</p> <p>11 MR. CETKOVIC: I think that's all I have.</p> <p>12 I may have some follow-ups. Thank you.</p> <p>13 CROSS EXAMINATION</p> <p>14 BY MR. LEEDBERG:</p> <p>15 Q. Good morning, Mr. Koran. Is it Koran or Koron?</p> <p>16 A. Koran.</p> <p>17 Q. Good morning. My name is Mike Leedberg. I 18 represent the Town of Sherborn in the lawsuit that 19 you've brought against them. I have a few questions 20 for you. First off, you listed some medications. 21 Just to be clear, have you taken any medications 22 today that might affect your ability to understand 23 my questions or answer them?</p> <p>24 A. No.</p>

10 (Pages 37 to 40)

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<p>1 Q. You've explained in some detail the auto accident</p> <p>2 with Ms. Weaver, and you mentioned that the police</p> <p>3 and ambulance personnel came to the scene after you</p> <p>4 called 911; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall having any conversations, first of</p> <p>7 all, with the officer?</p> <p>8 A. There were two officers.</p> <p>9 Q. Okay. Do you recall having any conversation with</p> <p>10 the officers?</p> <p>11 A. I did speak with them at the time they came, yes.</p> <p>12 Q. Do you recall specifically what you said?</p> <p>13 A. Verbatim, no.</p> <p>14 Q. Can you give me a general idea of the nature of the</p> <p>15 conversation?</p> <p>16 A. I was asked to describe the person that I was</p> <p>17 involved in the traffic incident with, at which time</p> <p>18 I provided the name, address, all of her information</p> <p>19 that we had shared with each other during the time</p> <p>20 of our exchange of insurance information.</p> <p>21 Q. And do you recall having any conversations with</p> <p>22 the EMTs?</p> <p>23 A. Quite a few actually.</p> <p>24 Q. Okay. Can you describe those for me?</p>	<p>1 A. It was just a sharp pain because he had bumped into</p> <p>2 it.</p> <p>3 Q. Was there any other increased pain as a result of</p> <p>4 that?</p> <p>5 A. As a result of him bumping into it? At that point</p> <p>6 no.</p> <p>7 Q. At any point?</p> <p>8 A. He just--he put ice back on the--he put ice on it,</p> <p>9 so no.</p> <p>10 Q. So it was just that one fleeting exacerbation, and</p> <p>11 then that was it?</p> <p>12 A. When he bumped into it, yes.</p> <p>13 Q. Any other conversations with the gentleman in the</p> <p>14 back?</p> <p>15 A. I asked them to contact the folks that were in the</p> <p>16 restaurant and to let them know that I would not be</p> <p>17 joining them for dinner because they initially had</p> <p>18 said--you know, at first they said, "It's up to you,</p> <p>19 if you want to go to the hospital," and I said,</p> <p>20 "Well, my foot is killing me. I think I need to be</p> <p>21 x-rayed. I don't know what's wrong with my foot."</p> <p>22 So they said, "Well, that's up to you. We'll be</p> <p>23 glad to take you there." But I had asked them to go</p> <p>24 get the folks from the restaurant that I was joining</p>
Page 38	Page 40
<p>1 A. Well, initially when they got there, there were</p> <p>2 three of them that arrived at the scene because they</p> <p>3 were telling me they were involved in a training</p> <p>4 session. So the supervisor came to observe because</p> <p>5 the two paramedics had both been away from active</p> <p>6 calls for nearly six months. So he came to observe.</p> <p>7 Q. Do you recall any other conversation?</p> <p>8 A. With the paramedic that was in the back of the</p> <p>9 ambulance with me on the way to the hospital who</p> <p>10 kept bumping my foot every time he tried--in trying</p> <p>11 to put ice, he tripped over the end of the gurney at</p> <p>12 one point and bumped into my foot. While he was in</p> <p>13 the back, he said, "You've got to forgive me. I'm a</p> <p>14 little bit out of practice."</p> <p>15 Q. Do you know that person's name?</p> <p>16 A. No.</p> <p>17 Q. What did he look like?</p> <p>18 A. At this point I don't remember.</p> <p>19 Q. Did he in any way injure your foot?</p> <p>20 A. He bumped into it. I don't believe he injured it,</p> <p>21 but he didn't make it feel better.</p> <p>22 Q. So it didn't increase your pain?</p> <p>23 A. It did at one point, yes.</p> <p>24 Q. And how long did that increased pain last?</p>	<p>1 for dinner, to let them know what was going on.</p> <p>2 They brought them out so I could have a conversation</p> <p>3 with the people that worked for me.</p> <p>4 Q. Who did you speak to that worked for you?</p> <p>5 A. I spoke with Michael Mondoor (phonetic), who was</p> <p>6 my--one of my regional sales managers, and I spoke</p> <p>7 with one of the brokers who came out, Jeff Cotton.</p> <p>8 Q. Jeff Cott?</p> <p>9 A. Cotton, C-o-t-t-o-n.</p> <p>10 Q. Describe the conversations you had with</p> <p>11 Mr. Mondoor (phonetic) and Mr. Cotton?</p> <p>12 A. They came out and said, you know, "What happened?"</p> <p>13 I said, "It's a long story, but can you let the</p> <p>14 folks know that I won't be joining them for dinner.</p> <p>15 If I do, it will be late. Get started. I'll join</p> <p>16 you when I get there."</p> <p>17 Q. As a result of the auto accident, the actual impact</p> <p>18 with Ms. Weaver's vehicle, did you suffer any</p> <p>19 injuries as a result of that?</p> <p>20 A. Yes, my left foot.</p> <p>21 Q. No. I'm just talking about the impact with the</p> <p>22 vehicle, between the two vehicles?</p> <p>23 A. Oh, no.</p> <p>24 Q. Did you feel any back pain after she ran over your</p>

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<p>1 foot?</p> <p>2 A. No.</p> <p>3 Q. Did you feel any back injury of any type?</p> <p>4 A. No.</p> <p>5 Q. Any discomfort?</p> <p>6 A. In my back, no.</p> <p>7 Q. Describe the procedure as far as how they got you</p> <p>8 into the ambulance?</p> <p>9 A. They helped me step into it on my own. They helped</p> <p>10 me up one person on each arm, and they had me step</p> <p>11 up into the back.</p> <p>12 Q. And how did you get onto the cot?</p> <p>13 A. They had me sit down on it, and they helped me sit</p> <p>14 down. They had the back angled at about a 45 degree</p> <p>15 angle, and they helped me sit down on the cot, and</p> <p>16 then that's when they removed my shoe and sock to</p> <p>17 examine my foot.</p> <p>18 Q. At any point did you become fully--did you lay down</p> <p>19 on the cot?</p> <p>20 A. No.</p> <p>21 Q. So you sat on the cot the entire way?</p> <p>22 A. Yes.</p> <p>23 Q. And did your position change at any point as far as</p> <p>24 on the cot?</p>	<p>1 A. No.</p> <p>2 Q. It seems so in the police report that Ms. Weaver</p> <p>3 told the officer that you were hostile and flailing</p> <p>4 your arms about at the scene of the accident, and</p> <p>5 that's why she left. What would you say to that</p> <p>6 statement?</p> <p>7 A. I would say that it was actually the other way</p> <p>8 around.</p> <p>9 Q. So Ms. Weaver is lying?</p> <p>10 A. I believe that the statement is not correct.</p> <p>11 Q. At any point did you have a conversation with any of</p> <p>12 the EMTs about an anger management problem?</p> <p>13 A. No.</p> <p>14 Q. Have you ever sought treatment for anger management?</p> <p>15 A. No.</p> <p>16 Q. Never sought counselling for anger management?</p> <p>17 A. No, I've seen counselling for my marriage.</p> <p>18 Q. When was that?</p> <p>19 A. In 2002.</p> <p>20 Q. Who did you seek counselling with?</p> <p>21 A. I don't remember the name of the doctor, but it was</p> <p>22 a result of our transitional move. My wife just</p> <p>23 recently having a baby, and a lot of pressures in</p> <p>24 the household. So somebody to talk to as a neutral</p>
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<p>1 A. My seated position?</p> <p>2 Q. No. At some point you were strapped into the cot,</p> <p>3 were you not?</p> <p>4 A. Yes.</p> <p>5 Q. When was that?</p> <p>6 A. When we were getting ready to leave the parking lot</p> <p>7 and head towards the hospital, but I was left in the</p> <p>8 same seated position that I had been in.</p> <p>9 Q. But your feet were up on the cot as well? You</p> <p>10 weren't sitting off to the side?</p> <p>11 A. Right. That's right.</p> <p>12 Q. Describe the cot for me? Does it have a mattress or</p> <p>13 a cushion?</p> <p>14 A. It had some type of cushion that was covered with a</p> <p>15 white sheet.</p> <p>16 Q. Do you know how thick that cushion was?</p> <p>17 A. I have no idea.</p> <p>18 Q. Do you know how tall the cot was when it was in its</p> <p>19 position in the back?</p> <p>20 A. I would estimate six to eight inches from the floor</p> <p>21 to the bottom area, and then the mattress or cushion</p> <p>22 was on top of that.</p> <p>23 Q. Were there any signs or problems with the cot at any</p> <p>24 point while you were on your way to the hospital?</p>	<p>1 setting.</p> <p>2 Q. Where were they located?</p> <p>3 A. In Syracuse.</p> <p>4 Q. Do you remember the name of the facility?</p> <p>5 A. No.</p> <p>6 Q. Do you remember the address?</p> <p>7 A. It was near the North Medical Building,</p> <p>8 North Medical Center, which I believe is--it's hard</p> <p>9 to remember the names of the road now, but I think</p> <p>10 it was on--I want to say Taft Road, but I could be</p> <p>11 wrong on that. It's at the same North Medical</p> <p>12 Center which is where I had some procedures done.</p> <p>13 Q. Are they affiliated with North Medical?</p> <p>14 A. I don't know. I don't remember if they were or not.</p> <p>15 Q. How did you pay for the counselling?</p> <p>16 A. It was through my insurance.</p> <p>17 Q. What was your insurance carrier at the time?</p> <p>18 A. I don't remember who my insurance--I think it was</p> <p>19 BlueCross BlueShield of Minnesota is who we had.</p> <p>20 Q. What kind of problems were you having as a result of</p> <p>21 these pressures that you've describe that you sought</p> <p>22 out counselling for?</p> <p>23 A. My wife and I just--you know, it was just the--we</p> <p>24 had moved for the second time in a couple of years.</p>

12 (Pages 45 to 48)

Page 45	Page 47
<p>1 We had just had our second child. She had just lost</p> <p>2 her father. He passed away. I lost my father only</p> <p>3 a few years before. A lot of life changing</p> <p>4 experiences that resulted in some pressures.</p> <p>5 Q. Okay. I understand the cause. What was the result?</p> <p>6 Were you fighting?</p> <p>7 A. We had some disagreements. We had a difficult time</p> <p>8 communicating with each other effectively. We were</p> <p>9 both at times sleep deprived from the baby early on</p> <p>10 because he refused to sleep early in his life, and</p> <p>11 he was born in May of 2002. So there were just</p> <p>12 minor things that came out of that, and I just</p> <p>13 needed someone to talk to outside of the house, and</p> <p>14 I didn't want to confide in work associates because</p> <p>15 I didn't think it was appropriate.</p> <p>16 Q. Okay. Were these disagreements? Were they heated?</p> <p>17 A. How would you define heated?</p> <p>18 Q. Yelling, screaming, swearing?</p> <p>19 A. Our household can be loud. So we talk sometimes at</p> <p>20 a louder--you know, with the kids yelling, we try to</p> <p>21 talk over the top of them. So I guess it could be</p> <p>22 defined as talking loudly, but you know, it's</p> <p>23 probably no different than any other household.</p> <p>24 Q. Then why would that require counselling?</p>	<p>1 we did not. Independently we went to counselling to</p> <p>2 strengthen our marriage so that we didn't get to a</p> <p>3 point where we needed to go at that level.</p> <p>4 Q. And what did the treatment for counselling entail?</p> <p>5 A. Just conversation.</p> <p>6 Q. No medications?</p> <p>7 A. No.</p> <p>8 Q. And your wife was seeking counselling for the same</p> <p>9 issues?</p> <p>10 A. She had some personal issues from her childhood that</p> <p>11 she needed to work out with her counselor.</p> <p>12 Q. Was it a counselor or a psychiatrist?</p> <p>13 A. It's a psychiatrist.</p> <p>14 Q. Was your wife on any medications for any--</p> <p>15 A. No.</p> <p>16 Q. You mentioned earlier that you had taken Effexor,</p> <p>17 and I think you estimated 1999, 2000; correct?</p> <p>18 A. Right, for my reflux.</p> <p>19 Q. Were you taking Effexor as of the time of this</p> <p>20 incident?</p> <p>21 A. Not that I remember.</p> <p>22 Q. Not that you remember?</p> <p>23 A. I don't remember.</p> <p>24 Q. You don't remember if you were taking a medicine at</p>
Page 46	Page 48
<p>1 A. I just had never dealt with myself dealing with the</p> <p>2 change in job, moving twice, losing my father, and</p> <p>3 then her losing her father who I was also close to,</p> <p>4 and she also was going to counselling as well, and</p> <p>5 we just felt that it would be appropriate for</p> <p>6 ourselves to talk to third-party folks that may</p> <p>7 have--just, you know, somebody to talk to.</p> <p>8 Q. Okay.</p> <p>9 A. It was an opinion that we had through insurance that</p> <p>10 was cost effective to vent our thoughts and</p> <p>11 basically not be judged for them.</p> <p>12 Q. Did the disagreements between you and your wife ever</p> <p>13 get physical?</p> <p>14 A. No.</p> <p>15 Q. Were the police ever called--</p> <p>16 A. No.</p> <p>17 Q. --as a result of any of those disagreements?</p> <p>18 A. No.</p> <p>19 Q. You said she was already in counselling?</p> <p>20 A. She had started around the same time that I did.</p> <p>21 Q. Independently of the marriage counselling that you</p> <p>22 guys sought?</p> <p>23 A. We didn't go together as marriage counselling, no.</p> <p>24 We did not go to marriage counselling together. No,</p>	<p>1 the time the accident?</p> <p>2 A. No, I don't.</p> <p>3 Q. Were you taking any medications at all at the time</p> <p>4 of this incident in 2003?</p> <p>5 A. No.</p> <p>6 Q. You don't remember, or you weren't taking any?</p> <p>7 A. I don't believe I was taking any medications at that</p> <p>8 time. If anything, it was related to my gout, which</p> <p>9 you know, the maintenance for those at the time.</p> <p>10 MR. LEEDBERG: Can I mark this</p> <p>11 Defendant's 1, please?</p> <p>12 (The MetroWest Medical System records were</p> <p>13 marked Exhibit No. 1 for identification.)</p> <p>14 Q. I'm going to show you a document that I just had</p> <p>15 marked as Defendant's 1, and on the first page of</p> <p>16 that document I'll represent to you that this is the</p> <p>17 records we received from MetroWest Medical System as</p> <p>18 a result of an inquiry to them. I want you to look</p> <p>19 towards the upper left-hand corner where it says,</p> <p>20 "Current medication." Do you see that area?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Can you read those off for me?</p> <p>23 A. Allopurinol, Norvasc, Effexor, and Trazadone.</p> <p>24 Q. Were you taking Effexor at that time?</p>

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<p>1 A. According to this, yes.</p> <p>2 Q. And what was that for?</p> <p>3 A. It was probably still related to my reflux.</p> <p>4 Q. I thought you said that was in 1999 or 2000?</p> <p>5 A. That's when I began that, yes.</p> <p>6 Q. What were you taking Trazadone for?</p> <p>7 A. That was because I had difficulty sleeping.</p> <p>8 Q. Who prescribed those two drugs for you?</p> <p>9 A. Dr. Diaz.</p> <p>10 Q. Where did you have those prescriptions filled?</p> <p>11 A. Where?</p> <p>12 Q. Yeah. Where did you routinely, if any, locations</p> <p>13 were you routinely had your prescriptions filled?</p> <p>14 A. In Syracuse Kinney Drug.</p> <p>15 Q. Kinney Drug?</p> <p>16 A. Uh-huh.</p> <p>17 Q. What's the address of that facility?</p> <p>18 A. It was on South Bay Road in Cicero.</p> <p>19 Q. Any other pharmacies were you'd routinely fill your</p> <p>20 prescriptions?</p> <p>21 A. That was our primary. I think later on before we</p> <p>22 moved we used a--there was another--Eckerd.</p> <p>23 Eckerd Drug, which was right up the street from</p> <p>24 Kinney. If something was not in inventory in</p>	<p>1 A. Backed up to the emergency room door. The driver of</p> <p>2 the ambulance came and opened the back door. The</p> <p>3 gentleman who was sitting in the ambulance with me</p> <p>4 switched places with him where he got on the</p> <p>5 outside, and the driver then got on the inside and</p> <p>6 was behind me. They were talking to each other. I</p> <p>7 was sitting. Apparently they were unlocking the</p> <p>8 gurney from whatever was holding it in place while I</p> <p>9 was in the ambulance, and the gentleman at my feet</p> <p>10 said, "You ready?" He said, "Yep." He says, "Let's</p> <p>11 go," and he started walking me out. He said, "You</p> <p>12 got him," and he says, "Yep," and the next thing I</p> <p>13 know I was slammed to the ground, and they like,</p> <p>14 "Oh, gee, we're sorry." They said, "Are you okay?"</p> <p>15 I said, "Well, that didn't feel very good," and then</p> <p>16 they started to fumble with the gurney to try to</p> <p>17 lift it up, and it went on for what seemed like five</p> <p>18 minutes of doing this, and it was a very, very cold</p> <p>19 night, and I asked if we could take this inside</p> <p>20 because I was freezing. I had no coat on and was</p> <p>21 sitting outside, and it was probably five degrees</p> <p>22 outside, and they said, "That's fine," and they</p> <p>23 wheeled me into the ER with the wheels--with the</p> <p>24 legs of the gurney not extended where I was sitting</p>
Page 50	Page 52
<p>1 Kinney, typically Eckerd inventories it.</p> <p>2 Q. So it's your testimony today that you were taking</p> <p>3 Effexor for over three years for a reflux problem?</p> <p>4 A. Yes.</p> <p>5 Q. Was it working?</p> <p>6 A. It was.</p> <p>7 Q. When did you stop taking Effexor for reflux problem?</p> <p>8 A. When the pain management decided that they wanted to</p> <p>9 double it to use because of the amount of pain</p> <p>10 medication they were going to give me. They doubled</p> <p>11 it because of the amount of pain medication they</p> <p>12 gave me. So apparently--I never--I wouldn't have</p> <p>13 been off of it at that point.</p> <p>14 Q. Did you ever suffer from depression?</p> <p>15 A. I was--I wouldn't say clinically depressed, no.</p> <p>16 Q. Did you ever seek treatment for depression?</p> <p>17 A. I wouldn't say--no, not--I mean, treatmentwise, no.</p> <p>18 Q. Have you ever been diagnosed with depression?</p> <p>19 A. No.</p> <p>20 Q. Back to the ride in the ambulance. Approximately</p> <p>21 how long did it take you to get to the hospital?</p> <p>22 A. I don't know the exact time, but I would estimate</p> <p>23 ten to twelve minutes.</p> <p>24 Q. And describe for me what happened at the hospital?</p>	<p>1 just six inches off the ground basically.</p> <p>2 Q. Did they pull you all the way out before they</p> <p>3 dropped you down?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall hearing anything before you were</p> <p>6 dropped?</p> <p>7 A. Just the one gentleman saying, "Do you have him? Do</p> <p>8 you got him," and he said, "Yep," and the next thing</p> <p>9 I know I hit the ground.</p> <p>10 Q. Did you hear any noises coming from the cot?</p> <p>11 A. I don't recall any noises at all.</p> <p>12 Q. Did it seem like there was anything wrong with the</p> <p>13 cot to you at that point?</p> <p>14 A. I had never been on it, so I couldn't judge if there</p> <p>15 was anything right or wrong. I had never been on a</p> <p>16 cot in that situation.</p> <p>17 Q. But did you perceive anything that might have given</p> <p>18 you an indication that there was something wrong</p> <p>19 with the cot?</p> <p>20 A. Not at all.</p> <p>21 Q. Do you know if the wheels to the cot touched the</p> <p>22 ground before you were dropped?</p> <p>23 A. I don't believe the wheels did. I think that--I</p> <p>24 mean, that was the issue, was if the wheels had come</p>

14 (Pages 53 to 56)

<p style="text-align: right;">Page 53</p> <p>1 down, then it wouldn't have dropped that way.</p> <p>2 Q. Is that an assumption you're making?</p> <p>3 A. That's based on what they were saying to each other,</p> <p>4 that the legs didn't disengage. They were locked in</p> <p>5 place.</p> <p>6 Q. What exactly did they say in that regard?</p> <p>7 A. Verbatim, I don't have the--I don't know verbatim,</p> <p>8 but I remember them talking about, you know, "I</p> <p>9 can't believe these legs didn't come down," or</p> <p>10 something along that line, and they kept fumbling</p> <p>11 with trying to--it sounded like they were trying to</p> <p>12 unclick something, and that's when I said, "Can we</p> <p>13 move this inside?"</p> <p>14 Q. Do you recall them saying anything about the legs to</p> <p>15 the cot not locking properly?</p> <p>16 A. They could not get the legs to come up. I don't</p> <p>17 know that they said anything about them not locking.</p> <p>18 They said they could not get the legs up to extend.</p> <p>19 Q. And if the EMEs--the EMTs were to testify that the</p> <p>20 legs did come down, the wheels did touch the ground,</p> <p>21 and they just didn't lock into place, is that</p> <p>22 accurate?</p> <p>23 A. Based on the way I hit the ground, my interpretation</p> <p>24 would be no, that's not accurate.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. You can't testify as to where they were looking at</p> <p>2 the time you were allegedly dropped?</p> <p>3 A. No.</p> <p>4 Q. Can you estimate what the height was that you were</p> <p>5 dropped?</p> <p>6 A. The back of an ambulance, from that level to the</p> <p>7 ground, which I would estimate being anywhere like</p> <p>8 36 inches.</p> <p>9 Q. Did you feel any pain as a result of being dropped?</p> <p>10 A. I felt a--what felt like a shock wave running</p> <p>11 through my back and legs. It wasn't a pain. It was</p> <p>12 kind of like an electrical shock, if you will.</p> <p>13 Q. And did you tell anybody about that?</p> <p>14 A. I told the nurse when I got inside. I told the</p> <p>15 EMTs. I said--they said, "Are you all right?" I</p> <p>16 said, "That did not feel good," and as they were</p> <p>17 fumbling everything, I said, "It felt like shock</p> <p>18 waves running through. Shocks running through my</p> <p>19 legs and back," and they just continued to fumble</p> <p>20 with the cot to try to get it to stand up. So then</p> <p>21 I mentioned it to the nurse. I said, "Listen, when</p> <p>22 they dropped me, I felt these shock waves through my</p> <p>23 back," and she said, "You weren't brought in here</p> <p>24 for your back. You were brought in here for your</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Describe that for me? How do you come to that</p> <p>2 conclusion about based on the way you hit the</p> <p>3 ground?</p> <p>4 A. Because as I came--it was basically a free fall. I</p> <p>5 mean, there was no sound, and then all of a sudden I</p> <p>6 smacked the ground. So I would think if there were</p> <p>7 legs, I would have heard something on the ground,</p> <p>8 and it would have sounded like something closing as</p> <p>9 opposed to just no sound and then hitting.</p> <p>10 Q. What were your eyes fixated on as you were being--do</p> <p>11 you recall looking at anything in particular as you</p> <p>12 were being unloaded from the--</p> <p>13 A. I was just kind of looking around getting my</p> <p>14 bearings as to where I was, you know, at the</p> <p>15 hospital, and looking to see if the--because he had</p> <p>16 wrapped an Ace bandage around the ice pack. I</p> <p>17 looked down at the ice pack on my foot to see if</p> <p>18 that was slipping or anything. I was just looking</p> <p>19 at that, and the next thing I know I was falling.</p> <p>20 Q. Did you look at the EMTs at any point?</p> <p>21 A. I don't remember looking at them, no.</p> <p>22 Q. So you can't testify as to where they were looking</p> <p>23 as you were being unloaded?</p> <p>24 A. No, I can't.</p>	<p style="text-align: right;">Page 56</p> <p>1 foot," and I said, "Well, can you look at my--can</p> <p>2 somebody look at my back," and she said, "No." I</p> <p>3 said, "Why?" And she said, "Because you weren't</p> <p>4 brought in here for that. You were brought in here</p> <p>5 to have me look at your foot. If you want to have</p> <p>6 your back examined, you need to essentially come</p> <p>7 back in, and we can do that."</p> <p>8 Q. The nurse said that?</p> <p>9 A. Yeah, which I said, "I don't understand why."</p> <p>10 Q. That's very unusual.</p> <p>11 A. Yeah, that's what I thought.</p> <p>12 Q. Did you tell the EMTs that you specifically felt</p> <p>13 pain in your back or your legs?</p> <p>14 A. I told them that I felt shock, like an electrical</p> <p>15 shock run through me.</p> <p>16 MR. LEEDBERG: Can I have that marked as</p> <p>17 Defendant's 2, please?</p> <p>18 (The Sherborn Fire Department record was</p> <p>19 marked Exhibit No. 2 for identification.)</p> <p>20 Q. I'm going to show you a document in which I've had</p> <p>21 marked as Defendant's Exhibit 2. I'm going to ask</p> <p>22 you to take a look at it while I get copies for</p> <p>23 counsel.</p> <p>24 (Discussion off the record.)</p>

<p style="text-align: right;">Page 57</p> <p>1 Q. Have you had a chance to read that?</p> <p>2 A. Uh-huh, yes.</p> <p>3 Q. What would you say about the narrative under</p> <p>4 "comments"?</p> <p>5 A. I would say that there is an inaccurate statement</p> <p>6 with the fact that it was "the stretcher appeared to</p> <p>7 gradually release to a lower position," and "asked</p> <p>8 if he was okay" stating that I had no injury is</p> <p>9 false.</p> <p>10 Q. So it's your testimony here today that the EMT put</p> <p>11 two blatantly false statements in his formal report?</p> <p>12 A. Yes, it is.</p> <p>13 MR. LEEDBERG: Can I mark this as the next</p> <p>14 exhibit?</p> <p>15 (The Sherborn Fire & Rescue Department</p> <p>16 report was marked Exhibit No. 3 for identification.)</p> <p>17 Q. I'll show you the incident report from the</p> <p>18 Fire & Rescue Department, and ask you to read the</p> <p>19 description of incident in that.</p> <p>20 A. "When unloading patient out of ambulance the</p> <p>21 stretcher did not stay up in lock mode and went down</p> <p>22 to the ground. Patient was not injured." That's</p> <p>23 false.</p> <p>24 Q. And Mr. Christensen appears to be the individual</p>	<p style="text-align: right;">Page 59</p> <p>1 A. I have no idea.</p> <p>2 Q. Do you know these people?</p> <p>3 A. No.</p> <p>4 Q. One of your children was born after the incident;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall any treatment you may have had with</p> <p>8 Dr. Diaz in the year preceding this incident?</p> <p>9 A. Regarding?</p> <p>10 Q. Anything?</p> <p>11 A. I saw Dr. Diaz for, you know, routine medical</p> <p>12 checks. We had--I had--if I had a gout flare-up, I</p> <p>13 saw him for that.</p> <p>14 Q. Anything else in particular you recall that you saw</p> <p>15 Dr. Diaz for for the year leading up to--</p> <p>16 A. I don't recall. I've seen a lot of doctors since</p> <p>17 then, so it's hard to remember.</p> <p>18 Q. Do you recall receiving an injection in</p> <p>19 December of '02 of any kind?</p> <p>20 A. An injection in December? For?</p> <p>21 Q. Anything at all? I'll represent to you that I have</p> <p>22 a billing document from Dr. Diaz's office that the</p> <p>23 insurance company was billed for an injection of</p> <p>24 Topomil (phonetic). Do you recall having an</p>
<p style="text-align: right;">Page 58</p> <p>1 that filled out this report. Again, he falsely</p> <p>2 stated what happened as far as your injuries in his</p> <p>3 formal report?</p> <p>4 A. Yes.</p> <p>5 Q. I've read the West End report that we've had marked</p> <p>6 as Defendant's 1, and I'll ask you this, and if you</p> <p>7 want to take a look at it, feel free to do so before</p> <p>8 you answer. Can you explain to me why none of your</p> <p>9 conversations with the nurse is found in any of</p> <p>10 those records regarding your back?</p> <p>11 A. I don't know. It would probably be the same thing</p> <p>12 as to why I was not even given something as simply</p> <p>13 as an Advil or a Tylenol for pain while I was there</p> <p>14 when I asked for it, and I was denied.</p> <p>15 Q. So it's your testimony that both EMTs lied about</p> <p>16 your denying injury from the cot incident, and the</p> <p>17 nurse didn't put anything about the back injury in</p> <p>18 the notes? That's your testimony?</p> <p>19 A. Yes.</p> <p>20 Q. It seems like quite a conspiracy. Can you give me</p> <p>21 an idea of why that is?</p> <p>22 MR. DURSO: Objection to the form of the</p> <p>23 question.</p> <p>24 Q. Can you explain to me why they might do that?</p>	<p style="text-align: right;">Page 60</p> <p>1 injection?</p> <p>2 A. It may have been for a gout flare-up.</p> <p>3 Q. So you would get injections for gout?</p> <p>4 A. I had them a number of times. They would inject</p> <p>5 steroids right into the inflamed joint to relieve</p> <p>6 the pressure and relieve the pain.</p> <p>7 Q. But do you recall specifically having one of those</p> <p>8 injections a couple of months before the accident?</p> <p>9 A. I had a number of them, so I don't remember if there</p> <p>10 was one prior to this incident or not. I don't</p> <p>11 remember.</p> <p>12 Q. Dr. Diaz would administer those injections right at</p> <p>13 his office?</p> <p>14 A. Yes.</p> <p>15 Q. Describe for me the pain in your back from the time</p> <p>16 you were at West End to the time you first sought</p> <p>17 treatment with Dr. Diaz such as the location of the</p> <p>18 pain in your body; the frequency you'd experience</p> <p>19 the pain; and the level of pain?</p> <p>20 A. From the time I was at the hospital it began where</p> <p>21 it was just very--the pain was minor at that point</p> <p>22 from the standpoint that I felt like small shock</p> <p>23 waves that I didn't think a lot about it, but I</p> <p>24 thought something didn't seem right, and that's why</p>

16 (Pages 61 to 64)

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<p>1 I brought it to the attention of the nurse and asked</p> <p>2 to have it looked at. The next morning when I got</p> <p>3 up I had discomfort when I woke up, but my foot was</p> <p>4 so sore from the injury that I was more focussed on</p> <p>5 my foot than I was on my back, but I noticed that I</p> <p>6 was rather stiff in getting up. When I arrived back</p> <p>7 with my family at the location where we were on</p> <p>8 Friday night and Saturday night visiting family and</p> <p>9 relatives, I had been riding in the car a good part</p> <p>10 of the day driving through a snow storm, and I</p> <p>11 had--was very uncomfortable when I got back, and</p> <p>12 just I had discomfort in my lower back to the point</p> <p>13 where it was--I just felt stiff. I felt like I</p> <p>14 didn't have a lot of flexibility, and the next</p> <p>15 morning when I got up, I had a difficult time</p> <p>16 getting up. My back was extremely sore at that</p> <p>17 point.</p> <p>18 Q. What morning was that?</p> <p>19 A. That was Saturday morning. The incident happened on</p> <p>20 Thursday evening. So Saturday morning it was</p> <p>21 starting to really bother me, and throughout the day</p> <p>22 the pain started to get more and more and was</p> <p>23 actually increasing to the point where it was more</p> <p>24 noticeable than the pain in my foot, which was</p>	<p>1 preceded the increase in pain?</p> <p>2 A. No. I had--we were visiting family and relatives,</p> <p>3 and there were a lot of my wife's cousins and such</p> <p>4 that were playing with the kids, so I didn't have to</p> <p>5 attend to getting on the floor with the kids. I</p> <p>6 didn't have to change diapers. I didn't have to</p> <p>7 carry the kids around, none of the things that I</p> <p>8 would do in a normal routine, which was good because</p> <p>9 then I didn't have to worry about, you know, if it</p> <p>10 was going to aggravate things at that point. So I</p> <p>11 really didn't have to actually participate in</p> <p>12 anything like that until we got home on Sunday</p> <p>13 night, which I wasn't able to participate in at that</p> <p>14 point.</p> <p>15 Q. Where was this location where you were visiting in--</p> <p>16 A. Avon, Connecticut.</p> <p>17 Q. In Avon?</p> <p>18 A. Uh-huh.</p> <p>19 Q. What was the name of the family you were visiting?</p> <p>20 A. My wife's family, the Somsen Family, her</p> <p>21 grandmother, who is now deceased, Janet Somsen, and</p> <p>22 her aunts, uncles, cousins.</p> <p>23 Q. What are their names?</p> <p>24 A. There are quite of few of them. There was--you want</p>
Page 62	Page 64
<p>1 fairly aggravated at that point still as well.</p> <p>2 Sunday, as I drove back to New York, it felt as if I</p> <p>3 had a golf ball in the small of my back that as I</p> <p>4 sat back, I could feel this golf ball, and no matter</p> <p>5 how I sat, I just felt this pressure and pain of</p> <p>6 this golf ball type feeling in my back that made my</p> <p>7 legs very uneasy to the point where I said to my</p> <p>8 wife, "If we have to drive much further, I want you</p> <p>9 to drive because I just don't feel comfortable."</p> <p>10 And we got home, and I put ice on it again, which I</p> <p>11 had done a couple days in a row just to try to help</p> <p>12 relieve some of the discomfort. So the next morning</p> <p>13 I got up, and I called Dr. Diaz and asked to come in</p> <p>14 there, and I had a conference call that I jumped on</p> <p>15 for 45 minutes and then jumped off and went straight</p> <p>16 to his office then at that point at which time he</p> <p>17 administered an injection to relieve--he gave me</p> <p>18 Demerol to relieve the pain and did a couple of</p> <p>19 steroid injections into the area where I had the</p> <p>20 discomfort to see if that would help relieve the</p> <p>21 pain there, and then he sent me for x-rays and such.</p> <p>22 So the pain had really increased, just progressively</p> <p>23 got worse.</p> <p>24 Q. Was there any event during those few days that</p>	<p>1 the complete list of everybody?</p> <p>2 Q. Who you can recall there?</p> <p>3 A. Well, let's see, there was my wife's brother, Glen,</p> <p>4 his wife, who is now his ex-wife, which was Christy,</p> <p>5 his two children, Kaylee and Matthew.</p> <p>6 Q. What are their last names?</p> <p>7 A. Somsen. It was my wife's maiden name.</p> <p>8 Q. Can you spell that for me?</p> <p>9 A. S-o-m, as in Mary, s-e-n, as in Nancy.</p> <p>10 Q. Are they from Connecticut as well?</p> <p>11 A. The Somsen Family grew up in the Connecticut area.</p> <p>12 My wife did not grow up in this area. She grew up</p> <p>13 in Ohio.</p> <p>14 Q. And other Somsens, do they live in Connecticut?</p> <p>15 A. They're--Janet Somsen, her grandmother, lived in</p> <p>16 Connecticut. Her biological father lived in--lives,</p> <p>17 I guess, in Holyoke, Massachusetts. He's estranged</p> <p>18 from the family.</p> <p>19 Q. What about the brother and the ex-wife and the kids?</p> <p>20 A. They, at the time, were living in</p> <p>21 Upstate New York--well, just outside of New York</p> <p>22 City in Upstate, but they're divorced, and they live</p> <p>23 in Atlanta.</p> <p>24 Q. Atlanta, Georgia?</p>

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<p>1 A. Yes.</p> <p>2 (Discussion off the record.)</p> <p>3 Q. Who else was at the house that weekend?</p> <p>4 A. Her Aunt Jean, which her last name is Connell, and</p> <p>5 her daughter, Katie Connell. Her Aunt Jane with her</p> <p>6 two daughters, Emily and Ellen, and their last name</p> <p>7 is Strong. Her Uncle Paul Zavarcky.</p> <p>8 Q. Can I just interject for one minute? If you know</p> <p>9 their address, could you give that as well?</p> <p>10 A. Okay. The Connells at the time were living in</p> <p>11 Sparta, New Jersey.</p> <p>12 Q. Where are they living now?</p> <p>13 A. They now live in--it's just outside of Sparta, but</p> <p>14 it's actually in Pennsylvania. I don't know the</p> <p>15 name of the little town, but then the Strongs live</p> <p>16 in West Hartford. The Rappaports, which was</p> <p>17 Danielle, Margo, Nicole, and her Aunt Joanne, who</p> <p>18 live in West Hartford as well. The Zavarckys live</p> <p>19 in Newton, Massachusetts, which was Judy and Paul.</p> <p>20 They were there.</p> <p>21 Q. Could you spell their last name for me?</p> <p>22 A. Z-a-v-a-r-c-k-y, and I believe that's all the folks</p> <p>23 that were there for the--and Janet Somsen. It was</p> <p>24 her house that everybody was visiting.</p>	<p>1 just observe and sit and talk with folks. I had a</p> <p>2 very quiet weekend. It was not--did not participate</p> <p>3 in any of the games and such or any of that type of</p> <p>4 activity. I never really participate in the games</p> <p>5 anyhow. It's not my thing.</p> <p>6 Q. Do you recall any specific conversations about this</p> <p>7 entire incident?</p> <p>8 A. Well, everybody that came in asked why I was wearing</p> <p>9 a boot, and I explained to them what had happened,</p> <p>10 and they were just, you know, people found humor in</p> <p>11 the fact that I got dropped. They found that</p> <p>12 humorous for some reason.</p> <p>13 Q. Did you mention your back injury to them?</p> <p>14 A. Yes, and they said that--they said, "Well, how does</p> <p>15 it feel now," and I said, "It seems to be getting</p> <p>16 worse," and they said, "Well, what are you going to</p> <p>17 do?" I said, "I'm going to see the doctor when I</p> <p>18 get home."</p> <p>19 Q. So you were injured, and they found that humorous?</p> <p>20 A. In a warped way, yes.</p> <p>21 Q. How did you leave the hospital that day?</p> <p>22 A. I was given a ride by one of the brokers staff</p> <p>23 members who happened to be visiting his mother. His</p> <p>24 name was Tom, and I don't remember his last name.</p>
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<p>1 Q. Was this some kind of planned event?</p> <p>2 A. It was her Aunt Joanne, her cousin, Kate, and her</p> <p>3 grandmother all celebrating birthdays within a three</p> <p>4 week span of each other, and her brother, Glen, all</p> <p>5 within a three week span of each other celebrating</p> <p>6 birthdays, and it just happened to be a time that</p> <p>7 everybody was available to come to town and see each</p> <p>8 other.</p> <p>9 Q. What did the events of the weekend entail?</p> <p>10 A. A lot of playing the game Boggle, which was the</p> <p>11 grandmother's favorite game. Basically sitting</p> <p>12 around talking. The kids climbing on Uncle Paul,</p> <p>13 and him wrestling with them, and a number of</p> <p>14 conversations and preparing food and eating a lot.</p> <p>15 Typical family event.</p> <p>16 Q. Did you guys go out anywhere?</p> <p>17 A. No, stayed at the house. I mean, maybe we ran to</p> <p>18 the store to get some more food items, you know, for</p> <p>19 snacks and such.</p> <p>20 Q. Did you run to the store?</p> <p>21 A. No, I didn't leave the house.</p> <p>22 Q. What did you do all weekend?</p> <p>23 A. I was in the back bedroom laying down quite a bit.</p> <p>24 I would come out. I'd sit in a chair and kind of</p>	<p>1 He worked for the broker, which was</p> <p>2 Pilgrim's of New England, and he happened to be</p> <p>3 visiting his wife's mother at the hospital with his</p> <p>4 wife, was walking through the ER to leave, looked</p> <p>5 over and saw me sitting in one of the rooms, and</p> <p>6 came in and had a conversation, you know, "What's</p> <p>7 going on," and was actually in there at part of the</p> <p>8 time when I was having the conversation about my</p> <p>9 back with the nurse, and then he left, you know,</p> <p>10 while I was in the midst of conversation because he</p> <p>11 felt that it was a private conversation, went out,</p> <p>12 and was making phone calls outside. He came back in</p> <p>13 and asked if I needed a ride back to the inn, in</p> <p>14 which I said, "That would be great." So he gave me</p> <p>15 a ride back to the inn at that point because they</p> <p>16 said that I was finished. There was nothing else</p> <p>17 they could do for me.</p> <p>18 Q. You don't know Tom's last name?</p> <p>19 A. I don't remember it, but I'm sure the folks at</p> <p>20 Pilgrim's of New England, if you called Tom Hill or</p> <p>21 Rich Hill and asked them the gentleman, they would</p> <p>22 know exactly what his name was.</p> <p>23 Q. How old is Tom approximately?</p> <p>24 A. Tom is probably late 30s.</p>

20 (Pages 77 to 80)

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<p>1 management doctors.</p> <p>2 Q. Did you see a urologist at any point?</p> <p>3 A. I did go see a urologist.</p> <p>4 Q. Do you remember the person's name?</p> <p>5 A. I don't remember his name. I apologize, but I did</p> <p>6 have--I was--I did go see the urologist. He</p> <p>7 indicated--he did a number of tests indicating to me</p> <p>8 that as he explained to me, he didn't see that there</p> <p>9 was anything physically wrong. So he said it had to</p> <p>10 be medication related based on the physical tests</p> <p>11 that they did, looking for blockages, looking for</p> <p>12 restrictions and such through all the examinations</p> <p>13 that they did. His determination was that it was</p> <p>14 medication-driven.</p> <p>15 Q. Did you ever have any sexual dysfunction of any kind</p> <p>16 prior to the incident?</p> <p>17 A. No.</p> <p>18 Q. Dr. Harvey Sour (phonetic); does that sound? Is</p> <p>19 that the urologist you saw?</p> <p>20 A. That sounds correct, yeah.</p> <p>21 Q. Have you seen any other urologist--</p> <p>22 A. No, he was the only one I've ever seen, and after</p> <p>23 that visit I don't know that I want to go to another</p> <p>24 one. No, I take that back. I correct myself. I</p>	<p>1 endocrinologist, who I'm waiting to have a follow-up</p> <p>2 appointment after the testing with them to see if</p> <p>3 they're going to have me go back on the testosterone</p> <p>4 again.</p> <p>5 Q. Did any physician tell you what the cause of this</p> <p>6 lower testosterone was?</p> <p>7 A. It's very common actually after men reach the age of</p> <p>8 40 for it to drop. It's just something that happens</p> <p>9 in some people. It's almost like male menopause.</p> <p>10 Q. Are you claiming that it's related to this incident</p> <p>11 in any way?</p> <p>12 A. No.</p> <p>13 Q. Is it your claim that your wife had trouble</p> <p>14 conceiving after this incident, conceiving a child?</p> <p>15 A. She did because I was unable to--I mean, I had the</p> <p>16 erectile dysfunction, and I was unable to finish, if</p> <p>17 you will. So we did not have difficulty in the past</p> <p>18 getting pregnant with two other children. Our plan</p> <p>19 was to have three children. We did not want the</p> <p>20 incident to come in the middle of that, you know, to</p> <p>21 be an obstacle for us. So we tried, but it was just</p> <p>22 not--we were not successful. So we had to go to an</p> <p>23 artificial insemination type of method or</p> <p>24 intrauterine injections that she had to get where</p>
Page 78	Page 80
<p>1 did see a urologist based on--I was being treated</p> <p>2 for testosterone imbalance, and I went to see a</p> <p>3 urologist in Frederick, Maryland who referred me to</p> <p>4 an endocrinologist because of my testosterone levels</p> <p>5 being low, which Dr. Diaz had continued a treatment</p> <p>6 with me there as I had with Dr. Samaan after--during</p> <p>7 around the time of my gout, he noticed that I was</p> <p>8 having like tendonitis. So he did some testing and</p> <p>9 found that my testosterone levels were really low.</p> <p>10 So he started doing testosterone injections for me,</p> <p>11 and they were working, and it worked great. It got</p> <p>12 the testosterone back up. Well, in the meantime,</p> <p>13 when we were trying to get pregnant, the combination</p> <p>14 of the erectile dysfunction and the fact that I was</p> <p>15 taking testosterone, which had to do with the fact</p> <p>16 that I was getting older, helped lower my counts.</p> <p>17 So it was a combination of the two, and the</p> <p>18 testosterone became--I ended up going off the</p> <p>19 testosterone so it helped my counts raise. It</p> <p>20 didn't help anything else because it made the</p> <p>21 erectile dysfunction even more exaggerated, but I</p> <p>22 did go see this urologist in Maryland to check into</p> <p>23 whether or not I should go back onto a regime with</p> <p>24 the testosterone, and they referred me to an</p>	<p>1 they--you know, I had to go and give a sample that</p> <p>2 then got scrubbed, if you will, so that the active</p> <p>3 swimmers were the only part of it that we took, and</p> <p>4 we put that--took that back to her doctor's office</p> <p>5 and injected that in her, and then she got to sit</p> <p>6 for a half hour while, you know, nature took its</p> <p>7 course.</p> <p>8 Q. It's your testimony that your wife never had</p> <p>9 problems conceiving with your first two children?</p> <p>10 A. She--she did not have--it was--you know, like any</p> <p>11 other couple, we went and we tried a few times</p> <p>12 before it was successful. She had two ectopic</p> <p>13 pregnancies that were--that she miscarried. I mean,</p> <p>14 if that's a difficulty. You know, that is a</p> <p>15 difficulty as far as that goes.</p> <p>16 Q. Were there any problems like that after the incident</p> <p>17 with your wife?</p> <p>18 A. She did not have any ectopics, no.</p> <p>19 Q. Have you ever had any back problems prior to the</p> <p>20 incident?</p> <p>21 A. No back problems, no. I mean, no more than just,</p> <p>22 you know, when you're working in the yard you get</p> <p>23 sore, but no. Do you know what I mean? No</p> <p>24 injuries.</p>

<p style="text-align: right;">Page 81</p> <p>1 Q. When you'd work in the yard and get sore, would that 2 pain go into your legs or thighs? 3 A. No. 4 Q. It was just localized to your back area? 5 A. It was just your shoulders, and you know, just from 6 working with a shovel or something like that. 7 Q. Did you ever have an x-ray or MRI of your back prior 8 to 2003? 9 A. Not that I'm aware of. 10 Q. Do you think you'd be aware of it if you did have an 11 x-ray or an MRI of your back? 12 A. I can't remember if I did. 13 Q. Have you had an MRI since this incident? 14 A. On my back? 15 Q. Yes. 16 A. I believe they did an MRI on my back. 17 Q. Is that where you lay in the tube? 18 A. Yes. 19 Q. You think you'd remember doing that prior to 2003 if 20 you had done it? 21 A. Yeah. I would hope so, yeah. 22 Q. And it's your testimony here today that you don't 23 recall ever having an MRI? 24 A. I don't recall doing that, no.</p>	<p style="text-align: right;">Page 83</p> <p>1 condition was a result of this incident? 2 A. No. That's where they stated that it was just 3 degenerative disk disease is something that everyone 4 has. It's just to what degree it flares up. 5 Q. Dr. Diaz was the first physician you saw as a result 6 of this incident or as a result of your back 7 condition? 8 A. For my back, yes. 9 Q. Describe your treatment from there? What happened 10 next? 11 A. He sent me for x-rays and MRI. 12 Q. Do you know what the results of those were? 13 A. I believe that there is a printed document that 14 states what the actual technical medical statements 15 are, but the first thing he sent me for was a chest 16 x-ray just to see if there was any blunt-force 17 trauma which can happen to organs in situations 18 where you're dropped, or you've been in a jarring 19 type of accident, and those came back negative. 20 There was no blunt-force trauma. Then he did the 21 MRI on that, on the lower back where it was 22 discovered that there was in the disk, the lower 23 disk and one in the lumbar disk and the cervical 24 disk that were both injured. So the cervical disk</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Has any physician indicated to you that you had back 2 problems that you may not have known about prior to 3 this incident? 4 A. If you can clarify the statement a little bit better 5 for me? 6 Q. Has any physician examining you indicated to you 7 that you had a degenerative condition of your lower 8 spine that pre-existed this incident? 9 A. I was informed by the orthopedic specialist as well 10 as the pain management that degenerative-- 11 Q. Can you give me their names, please? 12 A. Dr. Tiso and Dr. Wulff, that degenerative disk 13 disease is common in all humans, and it just happens 14 as you get older. Everyone's disks begin to 15 degenerate to some degree. Trauma will amplify the 16 problem and exaggerate it, you know, to a greater 17 degree. 18 Q. Did they indicate that that's your situation, that 19 you had a degenerative condition in your spine prior 20 to this incident that was exacerbated or otherwise 21 made symptomatic as a result of this incident? 22 A. That was the--I believe Dr. Wulff and Dr. Tiso both 23 stated that. 24 Q. Did any physician tell you that your degenerative</p>	<p style="text-align: right;">Page 84</p> <p>1 did not generate any pain the way the lumbar disk 2 did. 3 Q. Did you ever experience neck pain as a result of 4 this incident? 5 A. No, and I believe that that was probably 6 pre-existing, that one, because I had a 7 shoulder/neck type injury when I was working back in 8 the seafood industry back, I think, like in 1989. I 9 was unloading a box off of a truck, and I was 10 pulling one of those strapping bands, and I pulled 11 on it, and it broke, and I fell back, my shoulder 12 right into a--I think it was my left shoulder. I 13 fell right into the door of the little box truck. I 14 landed into the door and kind of twisted around, and 15 my neck and shoulder were you know, out of wack for 16 a little time. 17 Q. Who was your employer at the time? 18 A. Waterfront Seafoods. 19 Q. Where were they out of? 20 A. They were in Cleveland. They actually have--they 21 sold their business and have re-opened under another 22 name. 23 Q. Do you know what the name is? 24 A. I believe it's called Catonese (phonetic) Classic</p>

22 (Pages 85 to 88)

Page 85	Page 87
<p>1 Seafood.</p> <p>2 Q. Did a claim generate from that shoulder/neck injury?</p> <p>3 A. It did because I went to a chiropractic for--I</p> <p>4 believe it was maybe a month or six weeks.</p> <p>5 Q. What was the chiropractor's name?</p> <p>6 A. I don't remember. This was in Mentor, Ohio, but I</p> <p>7 went to him, and he did the stim. thing and twisted</p> <p>8 my neck and made my neck pop and did alignments, and</p> <p>9 I did that like twice, sometimes three times a week,</p> <p>10 and then I was, you know--it feels fine. So I</p> <p>11 didn't continue on with it.</p> <p>12 Q. You didn't have any other treatment as a result of</p> <p>13 that?</p> <p>14 A. No.</p> <p>15 Q. Did a lawsuit come out of that prior incident?</p> <p>16 A. No.</p> <p>17 Q. Did you get any other--was your claim approved for</p> <p>18 payment? You said you had a claim?</p> <p>19 A. Yeah, I mean, they covered it for the--as far as I</p> <p>20 know. I mean, it was a family-owned business. I</p> <p>21 went in. They took care of your insurance benefits.</p> <p>22 So I don't know how it was handled as far as that</p> <p>23 goes. I know I didn't have any out-of-pocket out of</p> <p>24 it for that treatment.</p>	<p>1 back to the same salary level. There was an award</p> <p>2 given for that.</p> <p>3 Q. What was that award?</p> <p>4 A. I believe it was, I think, \$50,000 for wages over a</p> <p>5 22 month period.</p> <p>6 Q. Was that paid? Did you receive that money?</p> <p>7 A. Yes.</p> <p>8 Q. In your answer to Interrogatory No. 5, which asks</p> <p>9 about prior injuries, you indicated that you pulled</p> <p>10 a muscle in your shoulder and your upper back while</p> <p>11 working in your yard years before the accident. Is</p> <p>12 that your recollection?</p> <p>13 A. No, it was actually while working in the seafood</p> <p>14 business prior to the accident.</p> <p>15 Q. So you never pulled a muscle in your shoulder or</p> <p>16 back working in your yard?</p> <p>17 A. I may have, but I don't remember.</p> <p>18 Q. You have no recollection of it?</p> <p>19 A. I don't. I know that it did happen definitely while</p> <p>20 I was working the seafood business.</p> <p>21 Q. And is there any reason you can recall why you</p> <p>22 didn't tell my client about the incident with the</p> <p>23 seafood company back in the '80s?</p> <p>24 A. That didn't come up in--I don't understand.</p>
Page 86	Page 88
<p>1 Q. You said you had a claim as a result of this</p> <p>2 incident with your employer; correct?</p> <p>3 A. Uh-huh, yes.</p> <p>4 Q. What was that claim for?</p> <p>5 A. The workmen's comp. claim with Schwan's?</p> <p>6 Q. Yes.</p> <p>7 A. Was for the injury.</p> <p>8 Q. Let me clarify. Was it to have your medical</p> <p>9 expenses paid, or were you looking for wages?</p> <p>10 A. I just went in and--I did what they asked me to do,</p> <p>11 which was to file within our office for it. I was</p> <p>12 told to contact somebody within the office, let them</p> <p>13 know of the incident, and then when I went to my</p> <p>14 doctor, and they ask how it happened, I had to--you</p> <p>15 know, I was informed to tell him that it happened</p> <p>16 during--at work, and how it was--you know, how the</p> <p>17 whole thing happened that way so it was billed</p> <p>18 appropriately.</p> <p>19 Q. Were you ever awarded any wages as a result of this</p> <p>20 injury?</p> <p>21 A. There was a lawsuit that was--for wages that were--a</p> <p>22 difference in my wages from the time period that I</p> <p>23 did not get--you know, from the time I was let go</p> <p>24 from the company until I was able to recoup getting</p>	<p>1 Q. Did you look at the interrogatories that you</p> <p>2 answered from my client prior to signing them? Why</p> <p>3 don't I put them into evidence?</p> <p>4 A. I haven't seen the interrogatories from your client.</p> <p>5 MR. LEEDBERG: Can I have that marked as</p> <p>6 Exhibit 4?</p> <p>7 (The answers to interrogatories was marked</p> <p>8 Exhibit No. 4 for identification.)</p> <p>9 Q. You know, I'm going to drop this line of</p> <p>10 questioning. It seems to me that that incident was</p> <p>11 prior to the date that we signed,</p> <p>12 February 6, 1992. Was it prior to that date?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I'm going to drop this line of questioning.</p> <p>15 Have you ever had any other accidents, whether it be</p> <p>16 auto accidents, prior to 2003, slip and falls, any</p> <p>17 accident you can recall where you were injured?</p> <p>18 A. I had two automobile accidents. One in 1983 while</p> <p>19 living in Akron, Ohio. I was driving through an</p> <p>20 intersection. Somebody coming across, who was</p> <p>21 timing the lights, T-boned me right into my</p> <p>22 passenger door.</p> <p>23 Q. Did you suffer any injuries in that accident?</p> <p>24 A. No.</p>

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<p>1 Q. Any injury or claim come out of that accident?</p> <p>2 A. No.</p> <p>3 Q. And what was the other accident?</p> <p>4 A. The other one was I was backing up in--I had just</p> <p>5 backed out of a parking space in a Kroger parking</p> <p>6 lot in Reynoldsburg, Ohio, and a gentleman in a</p> <p>7 pickup truck just was backing up while he was</p> <p>8 talking to one of the employees who was gathering</p> <p>9 carts and backed straight into my vehicle. He never</p> <p>10 looked behind him.</p> <p>11 Q. Were you injured in that accident?</p> <p>12 A. No.</p> <p>13 Q. Any other accidents of any kind where you recall</p> <p>14 being injured that required medical care prior to</p> <p>15 2003?</p> <p>16 A. No.</p> <p>17 Q. Any since the 2003 accident?</p> <p>18 A. No.</p> <p>19 Q. You've never had treatment for any lower back</p> <p>20 related problem?</p> <p>21 A. No.</p> <p>22 Q. You mentioned earlier that you belonged to a gym</p> <p>23 prior to this accident?</p> <p>24 A. Uh-huh.</p>	<p>1 haven't been able to do as a result of it.</p> <p>2 Hobbywise, you know, my greatest joy was playing</p> <p>3 with my kids, and it's very unfortunate now that my</p> <p>4 daughter, who is the oldest, remembers me prior to</p> <p>5 my injury, now will ask me if I'm having good back</p> <p>6 day or a bad back day in wanting to play with her or</p> <p>7 do something. My four-year-old son, who is now</p> <p>8 four, who was just an infant at the time has only</p> <p>9 known me as a person with a back injury as my</p> <p>10 21 month old is the same way. He's not even old</p> <p>11 enough to understand yet, but he only will know me</p> <p>12 as a guy with a back injury. What its done is I had</p> <p>13 a lot of fun with my daughter playing on the floor,</p> <p>14 and you know, we'd go for walks and that kind of</p> <p>15 thing with regularity. Now I'm restricted to doing</p> <p>16 that on days that I feel up to it, and it's based on</p> <p>17 the pain level. I go into the pain management.</p> <p>18 They ask what your pain level is for the day, and</p> <p>19 it's very unfortunate that you go in, and there's a</p> <p>20 pain level that--I mean, there's pain everyday, but</p> <p>21 you get to a point where you tolerate it, and you</p> <p>22 just deal with it, if you will, but what you have to</p> <p>23 do is evaluate how much above that acceptable, this</p> <p>24 is what I have to live with, level that you give</p>
Page 90	Page 92
<p>1 Q. And that question, I think, was in response to what</p> <p>2 were your activities prior to the incident. Any</p> <p>3 other activities such as hobbies, recreation,</p> <p>4 sports, anything you did prior to this incident in</p> <p>5 2003 that you can no longer do as a result of this</p> <p>6 incident in 2003?</p> <p>7 A. From the hobby standpoint, I would say that my yard</p> <p>8 work. I have had to--which was something I always</p> <p>9 found great pleasure in doing work in my yard. I</p> <p>10 now have to hire a lawn service, and I've had to</p> <p>11 hire people to do landscaping for me. Shovelling my</p> <p>12 driveway. I've had to hire people to do that for me</p> <p>13 while I lived in Upstate New York. Virginia, they</p> <p>14 don't really--or in Maryland, I mean, they don't</p> <p>15 really hire people to do that because it doesn't</p> <p>16 snow as often. The--you know, as far as routine</p> <p>17 painting and work around the house in that way,</p> <p>18 there's a number of projects that I have had to get</p> <p>19 someone else to do. When we moved to our new house,</p> <p>20 I had to hire a painter because I was unable to do</p> <p>21 all of that painting that needed to be done</p> <p>22 before--you know, when we were moving into it.</p> <p>23 Essentially any handywork around the house has been</p> <p>24 an item is something that I've just basically</p>	<p>1 them as a response, and I average, you know,</p> <p>2 basically an eight on the pain scale out of ten on a</p> <p>3 regular basis when I'm in there. That's just how it</p> <p>4 is. It's unfortunate, but I've had to come to</p> <p>5 accept that that's the level of pain that I'm in on</p> <p>6 a daily basis. It's--you know, I have a high</p> <p>7 tolerance for pain typically, and a great example of</p> <p>8 that is I fall asleep during root canals, and I</p> <p>9 never have problems with it, but the pain in my back</p> <p>10 has been so severe that it's debilitated me.</p> <p>11 Q. Any other recreation, sports, hobbies?</p> <p>12 A. I used to play softball. I don't do that. I used</p> <p>13 to play golf a lot. I haven't played golf since the</p> <p>14 accident.</p> <p>15 Q. Where did you play golf regularly prior to the</p> <p>16 accident?</p> <p>17 A. I played with customers. I played--as I travelled,</p> <p>18 I played in different locations, you know, for work.</p> <p>19 We'd play in different locations all over. You</p> <p>20 know, with different clients and that, we'd take</p> <p>21 them out to different places and play. So it was a</p> <p>22 regular weekend activity for me to do.</p> <p>23 Q. Any local courses that you'd go to regularly?</p> <p>24 A. I never got into any of the ones in the Syracuse</p>

24 (Pages 93 to 96)

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<p>1 area because by the time I got settled in up there, 2 it was--we got settled in September. It was the end 3 of the season. I didn't really have time to get 4 acclimated as I just moving into the area. So I 5 never got a chance to play up there, but I played in 6 Florida, and I played in Georgia and that type of 7 thing throughout that fall and winter with different 8 meetings that we went to. I played in Las Vegas, 9 that kind of thing, and then after the incident or 10 the accident and everything, I haven't been able to 11 do anything. In fact, I was staying near a driving 12 range, and I still--I love golf. I mean, it's one 13 of those things that I've always--I've been playing 14 since I was 11 years old, and my father-in-law and I 15 used to play, you know, as our--that was a big 16 connection for us, and it was one of those things 17 that, you know, I stopped at a driving range just to 18 kind of be in the environment and see what was going 19 on, and I ran into somebody I knew, and they're 20 like, "Hey, you want to take a couple swings?" And 21 I tried it, and I just felt miserable. I couldn't 22 even do it, and I just handed the club over, and I 23 said, "I can't do this." 24 Q. Who was this person?</p>	<p>1 definitely the pastime of choice when I had time to 2 do it. My kids were the primary, hobby, pastime, 3 and everything. Once we had children, you know, the 4 time to do other things really went away. 5 Q. Any other hobbies, sports, recreational activities? 6 A. No. There may be, but I can't think of any at this 7 point. 8 MR. LEEDBERG: Can I mark this 9 Defendant's 5, please? 10 (The letter 2-10-03 was marked 11 Exhibit No. 5 for identification.) 12 Q. I'm going to show you a document marked as 13 Defendant's 5. Do you recognize that document? 14 A. If I could have a moment to read it? Yes, I do. 15 Q. Did you create that document? 16 A. Yes. 17 Q. Is that your signature at the bottom? 18 A. Yes. 19 Q. Explain to me the remark about the stretcher being 20 faulty? 21 A. Because the legs did not come down on the stretcher. 22 To me it was the fact that the stretcher did not 23 work. 24 Q. Do you think that's what caused the incident?</p>
Page 94	Page 96
<p>1 A. It was a gentleman I worked for at the time. He was 2 up in Long Island, Dave Horowitz, and I just 3 didn't--I couldn't hit the ball. I mean, I hit it, 4 but I just--I felt miserable. 5 Q. What was your typical 18-hole score prior to the 6 incident? 7 A. Anywhere from 89 to 91, in that range. 8 Q. Did you say you played softball? 9 A. Yes. 10 Q. Did you play for a league? 11 A. I played in leagues until my wife and I moved to 12 Columbus, and then I was travelling too much so I 13 couldn't play. Our weekends got--we met in 14 Cleveland. I played in Cleveland, and I played 15 shortstop. 16 Q. What year was that? 17 A. I played up until--I played through '93. 18 Q. Prior to the incident you hadn't played softball for 19 a league for ten years? 20 A. No, I didn't have a chance to. I was working too 21 much, travelling too much. 22 Q. Would you call softball one of your pastimes at the 23 time of this incident? 24 A. Not at the time of the incident. Golf was my--was</p>	<p>1 A. I think if the legs had come down, they wouldn't 2 have dropped me. 3 Q. Did you suffer from hypertension prior to this 4 incident? 5 A. My blood pressure had recently started to elevate, 6 yes. 7 Q. Has there been any change in the status of your 8 blood pressure since this incident that you 9 attribute to this incident? 10 A. My blood pressure continued to elevate, and rather 11 than being on one medication, I was--I went to a 12 cardiologist where I was switched to two medications 13 to balance it out, and I currently have my blood 14 pressure under control. 15 Q. How long did it take you to get your blood pressure 16 under control? 17 A. Just under a year. 18 Q. Do you think that any blood pressure related 19 condition was caused by this incident? 20 A. My primary care physician and the pain management 21 doctor, Dr. Tiso and Dr. Diaz both made comments to 22 the fact that when you're in pain, your blood 23 pressure elevates, which was the result of why at 24 the time of the incident my blood pressure was as</p>

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<p>1 elevated as it was directly a result of the pain</p> <p>2 that I was in, and it noted on the</p> <p>3 Defendant Item No. 1 in the upper right corner there</p> <p>4 the blood pressure at 194 over 106. It indicates a</p> <p>5 high blood pressure right there at that point, and</p> <p>6 even the paramedics had listed 160 over 120 at the</p> <p>7 time that they had me in the back of the ambulance.</p> <p>8 So that was directly related to the pain that I was</p> <p>9 in at that point.</p> <p>10 Q. Who's Dr. Cameron Huckle?</p> <p>11 A. If I remember correctly, he is a doctor that was</p> <p>12 doing an experimental procedure for disk replacement</p> <p>13 surgery, and my name was given to him--actually I</p> <p>14 don't know how my name was given to him, but I was</p> <p>15 contacted by him to see if I was interested in</p> <p>16 participating in a disk replacement surgery, and I</p> <p>17 would be actually as a live guinea pig, if you will.</p> <p>18 I went through and was examined by him and talk to</p> <p>19 him and such, and after listening to what they had</p> <p>20 to say as far as--I looked at the whole scenario and</p> <p>21 said, "I need to seek advice from--you know, I need</p> <p>22 to talk to some other doctors to see if this is the</p> <p>23 right course of action for me," and I just didn't</p> <p>24 feel right about going with something that, No. 1,</p>	<p>1 endocrinologist because she didn't know how to read</p> <p>2 it. So they advised me to go immediately to see the</p> <p>3 neurosurgeon. I went in. We were talking, and I</p> <p>4 told him about some of the treatment methods that</p> <p>5 have been discovered--it was a non-related</p> <p>6 conversation, if you will. They went in and</p> <p>7 discovered this was nothing to be concerned about.</p> <p>8 I said, "While I've got you here, can I ask you a</p> <p>9 question," and I explained the treatments that I'd</p> <p>10 been going through and that, and he basically told</p> <p>11 me his advice and not knowing my history and not--he</p> <p>12 says, "But just in my casual advice, your best</p> <p>13 option is to not have surgery." He says, "My advice</p> <p>14 to you is to try to slowly--over time you're going</p> <p>15 to have to wean yourself off the pain medication and</p> <p>16 find other ways to manage the pain," in which I</p> <p>17 said, "What does that mean?" He said, "Well, we'll</p> <p>18 have to set an appointment and talk about that</p> <p>19 further." He says, "I really think that surgery is</p> <p>20 not the answer. Once you start cutting into</p> <p>21 somebody's back, it presents a problem that becomes</p> <p>22 a long-time problem."</p> <p>23 Q. Did you ever actually see Dr. Huckle?</p> <p>24 A. Yes.</p>
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<p>1 at the time wasn't FDA approved. No. 2, was still</p> <p>2 in experimental phase, and it just was too risky to</p> <p>3 me.</p> <p>4 Q. So have you since decided not to go forward with</p> <p>5 this disk replacement surgery?</p> <p>6 A. Yes, I've decided not to. You're correct.</p> <p>7 Q. Have you discussed any other treatment options with</p> <p>8 any of your physicians?</p> <p>9 A. Most recently I spoke with a neurosurgeon.</p> <p>10 Q. What was that neurosurgeon's name?</p> <p>11 A. His name is--let me think of it here. It's</p> <p>12 Dr. Nathan Swami, S-w-a-m-i, and he's in Maryland.</p> <p>13 When I went to get my MRI--I had an MRI done on my</p> <p>14 head for my testosterone. It seems unusual, but the</p> <p>15 testosterone at times is directly related to</p> <p>16 sometimes the tumors on the pituitary gland, and the</p> <p>17 only way they can find that out is to do an MRI. At</p> <p>18 the time of that, they discovered that maybe it</p> <p>19 happened when I was a baby, but--I might have been</p> <p>20 dropped on my head as a baby or something. I had</p> <p>21 like an indentation or something in the--where there</p> <p>22 was spinal fluid on the front corner, just a little</p> <p>23 corner in my brain. It doesn't affect anything, but</p> <p>24 it showed up on the MRI, and it alarmed the</p>	<p>1 Q. You did?</p> <p>2 A. I spent four hours in his office one afternoon.</p> <p>3 MR. LEEDBERG: For the record, I don't</p> <p>4 think we have his report.</p> <p>5 A. It was a--like I said, I got contact--I don't even</p> <p>6 know who contacted me, and it was in</p> <p>7 Buffalo, New York that I had to go there for the</p> <p>8 appointment. I don't know that an actual report was</p> <p>9 ever generated. He was talking to me kind of as</p> <p>10 a--it was a discussion to see if I was interested in</p> <p>11 participating in a--in this study. It was not</p> <p>12 something that workmen's comp. would endorse either,</p> <p>13 and they did not feel strongly about it either. So</p> <p>14 I didn't have any comfort going through with it, but</p> <p>15 I know that the reports are available if you need</p> <p>16 them.</p> <p>17 Q. So your present plan is to stay the course of</p> <p>18 treatment you're currently receiving?</p> <p>19 A. At this point to try to manage things as best I can.</p> <p>20 You know, that's where I'm at at this point until I</p> <p>21 can get to another doctor--until I get back to</p> <p>22 Dr. Swami and discuss with him further options that</p> <p>23 he wasn't at liberty to talk about the day we were</p> <p>24 there because he didn't have my records in front of</p>

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<p>1 me to look at my history.</p> <p>2 Q. The truck that you rented and drove back to</p> <p>3 Connecticut in, was that an automatic or standard?</p> <p>4 A. Automatic.</p> <p>5 Q. You mentioned that you were terminated from your</p> <p>6 employment in your view because they didn't want you</p> <p>7 to have a worker's compensation case; is that</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Could you explain that to me?</p> <p>11 A. My former direct supervisor, Pat McCoy, never once</p> <p>12 acknowledged my injury at all. Never said, "How are</p> <p>13 you feeling?" Never said, "Wow, what happened?"</p> <p>14 Never said anything regarding the injury. In fact,</p> <p>15 I had to fly--about three or four weeks after the</p> <p>16 accident I had to fly to Florida for a national</p> <p>17 sales meeting and awards presentation that the</p> <p>18 entire company was going to, and I was in a back</p> <p>19 brace, and I was heavily medicated and falling</p> <p>20 asleep in meetings in front of people, walking bent</p> <p>21 over most the time, you know, like I said in a</p> <p>22 brace, very uncomfortable, and he never once made a</p> <p>23 comment at all about, you know, "Hey, what's wrong?</p> <p>24 Hey, how you feeling or anything?" Nothing. No</p>	<p>1 it was very suspect as to why it happened.</p> <p>2 Q. Do you think them terminating your employment would</p> <p>3 compromise your ability to bring a worker's</p> <p>4 compensation claim?</p> <p>5 MR. DURSO: I'm sorry, could you say that</p> <p>6 again?</p> <p>7 Q. Do you think that them terminating your employment</p> <p>8 would compromise your ability to bring a worker's</p> <p>9 compensation claim? Your testimony earlier today</p> <p>10 was that they terminated you because they did not</p> <p>11 want you to have a worker's compensation case.</p> <p>12 A. My impression was is that they--by the fact that I</p> <p>13 got a workmen's comp. case--there was a workmen's</p> <p>14 compensation case, and it was going to raise their</p> <p>15 insurance rates on workmen's compensation, that that</p> <p>16 did not go over well with them. They were angry</p> <p>17 about that.</p> <p>18 Q. And you think that these other reasons they gave for</p> <p>19 terminating your employ were a front because they</p> <p>20 were displeased with your worker's compensation</p> <p>21 claim?</p> <p>22 A. Yes, and when I was awarded the back wages, you</p> <p>23 know, it was based on that same thing, that there</p> <p>24 was not just cause for termination.</p>
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<p>1 management personnel acknowledged it. Every other</p> <p>2 person at the event came up and talked to me about</p> <p>3 it. None of the management personnel ever</p> <p>4 acknowledged it at all, and then all of a sudden out</p> <p>5 of the blue after it was--between that and my</p> <p>6 challenging the fact that they changed the policy on</p> <p>7 bonuses and it affected one of my employees, and I</p> <p>8 challenged that to my boss's boss, and asked the HR</p> <p>9 department how to handle it, they weren't pleased</p> <p>10 with me getting involved at that level and started</p> <p>11 to really give me a lot of grief. So they</p> <p>12 said--they made up this thing about me</p> <p>13 inappropriately using a company credit card, which</p> <p>14 was I had a direct billing on the card for my cell</p> <p>15 phone, and they came out with a policy in January,</p> <p>16 and I had already had a direct billing for my cell</p> <p>17 phone. They came out with a policy in January that</p> <p>18 no more could you charge your cell phone to that.</p> <p>19 Well, I had contacted the cell phone company to do</p> <p>20 that, but there were two charges that came through</p> <p>21 on the card anyhow, and they said that was</p> <p>22 inappropriate because I had already been given the</p> <p>23 notice, and then two things came through, and that</p> <p>24 was their reasoning. So to me in my interpretation,</p>	<p>1 MR. LEEDBERG: I'm going to look over my</p> <p>2 notes. Do you have any questions?</p> <p>3 MR. CETKOVIC: Nope.</p> <p>4 MR. LEEDBERG: I'm going to look over my</p> <p>5 notes.</p> <p>6 (Brief break.)</p> <p>7 (The Syracuse Orthopedic records were</p> <p>8 marked Exhibit No. 6 for identification.)</p> <p>9 Q. (Mr. Leedberg) Mr. Koran, I'm going to ask you a</p> <p>10 couple questions on Defendant's 6, which I'll</p> <p>11 represent to you are the documents that we got back</p> <p>12 from Warren Wulff as a result of a request for</p> <p>13 medical records from him, and I want to refer you</p> <p>14 specifically to the second page under--it says,</p> <p>15 "Review of Systems 4" and it says, "Review of</p> <p>16 Systems." Do you see that paragraph a couple down?</p> <p>17 A. Uh-huh.</p> <p>18 Q. If you could read that, read that last sentence in</p> <p>19 that?</p> <p>20 MR. DURSO: Of which one?</p> <p>21 MR. LEEDBERG: "Review of Systems," I'm</p> <p>22 sorry.</p> <p>23 MR. DURSO: "Review of Systems 4" or--</p> <p>24 MR. LEEDBERG: No, the one without the</p>

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<p>1 four.</p> <p>2 A. "Patient denies dysuria, hematuria, nocturia,</p> <p>3 frequency, and sexual dysfunction."</p> <p>4 Q. Do you recall denying sexual dysfunction on that</p> <p>5 date, which seems to be September 7, 2004?</p> <p>6 A. No.</p> <p>7 Q. And I presume later in record he says it again--it</p> <p>8 was actually an earlier visit on July 17, 2003, and</p> <p>9 it would be your testimony here today that that's</p> <p>10 not accurate?</p> <p>11 A. No, because I was taking--you know, if I needed to,</p> <p>12 I was doing the Cialis. So that was--I mean, it</p> <p>13 might have been interpreted that it wasn't</p> <p>14 dysfunctional because I was taking the Cialis to fix</p> <p>15 it. That would be my interpretation.</p> <p>16 Q. Do you recall having discussions in particular about</p> <p>17 sexual dysfunction?</p> <p>18 A. No, not at all.</p> <p>19 Q. Where do you fill your prescriptions now that you're</p> <p>20 down in Maryland?</p> <p>21 A. We go to a CVS, and then there are some mail order</p> <p>22 prescriptions, but the pain management ones I do all</p> <p>23 through a place called Medicine Plus, which is a</p> <p>24 small pharmacy that I have everything done through</p>	<p>1 some medical records, some of which we were aware</p> <p>2 of, some of which we were not, in particularly the</p> <p>3 records for Diaz pre-loss, and there was some</p> <p>4 mention of a Dr. Huckle, some physicians down in</p> <p>5 Maryland that we have no records from. So just for</p> <p>6 those reasons, I'm going to state for the record</p> <p>7 that I think we should reserve our rights to</p> <p>8 reconvene at a later date if those records raise any</p> <p>9 issues with regards to the claim.</p> <p>10 MR. DURSO: Just so I'm clear, you have</p> <p>11 some Diaz records.</p> <p>12 MR. LEEDBERG: I have the records from</p> <p>13 Diaz February 10th, your first visit forward, and</p> <p>14 there were at least seven or eight visits to that</p> <p>15 office previously, which I understand from</p> <p>16 conversation yesterday, Dr. Dispensa (phonetic) took</p> <p>17 Mr. Koran's chart after the business dissolved.</p> <p>18 That was his partner. I think Dr. Dispensa</p> <p>19 (phonetic), but that's what they say at this point,</p> <p>20 but we'll see if that pans out.</p> <p>21 MR. DURSO: Okay.</p> <p>22 (Deposition suspended at 1:49 p.m.)</p> <p>23</p> <p>24</p>
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<p>1 that pharmacy because the way the State of Maryland</p> <p>2 is structured, if you're on a controlled substance,</p> <p>3 you have to declare a single pharmacy. So I had to</p> <p>4 call around and find a pharmacy that would have the</p> <p>5 medications that I was looking for when I needed to</p> <p>6 fill the prescriptions. So this small pharmacy</p> <p>7 called Medicine Plus, which is like an old fashioned</p> <p>8 pharmacy actually has the items that I need, and as</p> <p>9 a result of that--</p> <p>10 Q. Do you know where they're based out of?</p> <p>11 A. They're in Newmarket. They're actually right in</p> <p>12 Newmarket.</p> <p>13 Q. You were saying as a result?</p> <p>14 A. As a result of that, I utilized them for all of my</p> <p>15 pain management medication. I do mail order for my</p> <p>16 other maintenance prescriptions that I'm able to do,</p> <p>17 but controlled substances have to be done, you know,</p> <p>18 on a monthly basis.</p> <p>19 Q. Do they call that the Rush Limbaugh Act?</p> <p>20 A. I have no idea.</p> <p>21 Q. The CVS, where is that located?</p> <p>22 A. That's in Frederick.</p> <p>23 MR. LEEDBERG: Okay. I'm just going to</p> <p>24 state for the record that it appears we're missing</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 I, the undersigned, JOSEPH KORAN, do hereby</p> <p>4 certify that I have read the foregoing deposition,</p> <p>5 taken on 21st, July, 2006, and that to the best of</p> <p>6 my knowledge, said deposition is true and accurate</p> <p>7 (with the exception of the following corrections</p> <p>8 listed below):</p> <p>9 Page Line Correction</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Signed: _____</p> <p>19</p> <p>20</p> <p>21 Date: _____</p> <p>22</p> <p>23</p> <p>24</p>

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COMMONWEALTH OF MASSACHUSETTS

I, Leslie D'Emilia, a Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing deposition was taken before me on the 21st day of July, 2006;

That the witness named in the deposition, prior to being examined, was by me first duly sworn;

That said deposition was taken before me at the time and place herein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

That said deposition is a true record of the testimony given by the witness and of all objections made at the time of examination.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF I have subscribed my name and affixed my seal of this 21st day of July, 2006.

Leslie D'Emilia
Notary Public
Massachusetts
My Commission Expires:
March 13, 2009